March 2, 2011

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

Re: SEC Initiatives under the Dodd-Frank Act – Special Disclosures Section 1502 (Conflict Minerals) File Number S7-40-10

Dear Chairman Schapiro:

We are writing on behalf of a coalition of industry groups regarding Sec. 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The associations listed at the end of this letter represent a significant portion of the companies that may be subject to the Securities and Exchange Commission's (SEC) regulation on conflict minerals. We have worked together to develop the following comments in response to the Proposed Rule published by the SEC to implement Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

We support the underlying goal of Sec. 1502 to prevent the atrocities occurring in the Democratic Republic of Congo (DRC) and the adjoining countries, and are working with other stakeholders to address the problem. Many of our companies are currently participating in domestic and international initiatives to create greater supply transparency.

We appreciate the opportunity to work with the SEC to create a final rule that implements Sec. 1502 in a manner consistent with the realities of global supply chains, and that acknowledges the facts on the ground in the DRC and the limited control downstream users have on the refiners/smelters and mines. We believe the law can be implemented in a manner consistent with the goals of the legislation without unduly burdening industry and harming American competitiveness. However, we do believe greater work is needed to design a rule that accomplishes that end.

We appreciate the SEC's openness and willingness to consider additional approaches or standards for implementing Sec. 1502 of the Dodd-Frank Act. The proposed rule acknowledges many of the realities facing companies developing compliance programs to increase supply chain transparency and to source responsibly. We are particularly encouraged that the SEC did not propose a one-size fits all approach for due diligence or country of origin inquiries. However, we do believe further clarification and modifications to the proposed rule are needed.

Specifically, the SEC should acknowledge significant challenges that exist due to lack of infrastructure. In order for issuers and their supply chain to be able to require (or specify) the use of conflict free minerals, "bagging and tagging" schemes as well as smelter validation programs must be in place. The majority of issuers subject to the new requirements do not directly purchase the mineral ores. Instead mineral ores enter a supply chain only after multi-

step refinement and reprocessing into industrial metals. Issuers or their supply chains must be able to rely upon certifications/validations from the mines and smelters that the minerals are conflict free. Unfortunately, those programs are not operational at this time. Industry is working diligently to create smelter validation schemes but they will not be operational by the time disclosure requirements go into effect. The lack of infrastructure is serious issue and must be acknowledged.

To achieve the goals of the law without placing undue burdens on industries or undermining the diplomatic efforts underway in the region, we believe that the SEC needs to:

1) State clearly the legal standard for compliance (i.e., that an audit of a company's due diligence efforts is acceptable in place of a product-based or materials certification approach);

2) adopt a set of transition rules that recognizes the current infrastructure limitations;

3) Minimize unnecessary or unwarranted harm to company brands through inexact designation of products;

4) Apply the regulation only to those issuers that have control over production and supplier sourcing; and

5) Allow issuers to furnish a separate report to the SEC in lieu of adding conflict mineral disclosures to their annual report.

1. Legal Standards

The "reasonable country of origin inquiry" and "due diligence" approaches adopted by the proposed rule are appropriate. We offer the following comments on country of origin inquiry and due diligence.

First, we believe a change is need to the terminology used to describe an issuer's obligation. The SEC should change the terminology from "country of origin inquiry" to "reasonable source country inquiry." Country of origin is a term of art and has distinct legal meaning under customs and international trade law that is not applicable to the determinations needed under Sec. 1502. Instead, the SEC should require a "reasonable source country inquiry" to determine that the conflict minerals did or did not originate in DRC or adjoining counties.

Second, the SEC should not prescribe a one-size-fits-all approach to reasonable inquiry. The nature of a reasonable inquiry will vary with the factual circumstances surrounding the issuer, such as its size, degree of influence over suppliers, and complexity of its supply chain. Specifying a specific standard of reasonableness would necessarily excuse some issuers from responsibilities that they should take on and at the same time impose an unattainable benchmark for others. In neither case would setting the standard serve the purposes of the statute. Finally, creating a specific standard for inquiry will inhibit the development of best practices that will develop as issuers design their compliance programs.

Rather than prescribe a reasonable inquiry standard, the SEC should retain the flexible standard contained in the proposed rule and acknowledge that the standard is broad enough to

encompass an issuer's reliance on reasonable supplier declarations or smelter validations or representations as appropriate for determining that the conflict minerals did not originate in the conflict regions of the DRC or adjoining countries.

We encourage the SEC to create a flexible due diligence standard that recognizes that no two supply chains are identical. The SEC should provide guidance to issuers on what would constitute reliable due diligence but not mandate a specific set of requirements. We were encouraged by the proposed rule in its acknowledgement that issuers are only in the beginning stages of developing due diligence programs and, as such, the programs are very much works in progress that will mature over time. Each issuer needs the flexibility to develop a process appropriate for its supply chain and products. Given the diversity of issuers and products affected, issuers should be permitted to develop due diligence plans that are consistent with their supply chains and information available from recognized government sources. This is consistent with work with the international community to develop global supply chain solutions. Such flexibility is also consistent with other areas of law regarding supply chains and human rights issues.

We believe that an issuer should be able to create a due diligence program aligned with reliance on reasonable representations from suppliers or a supplier declaration approach and smelter compliance to determine the origin of conflict minerals. In executing due diligence, an issuer would work with its suppliers to prevent the use of conflict minerals from the DRC or adjoining countries.

Reliable Due Diligence: Depending on the characteristics of the individual supply chain, some or all of the below should be considered acceptable evidence of reliable due diligence.

- Use of information gained through an industry-wide process (where appropriate);
- Creation of a conflict minerals policy and legal obligations through contract provisions, purchase orders, or other means to require reporting on sourcing from a conflict region;
- Supply chain risk assessment;
- Obligations on suppliers to push the new policies upstream and transmit information downstream through contract provisions;
- Inclusion of a description of policies and procedures to remediate instances of non-conformance with the policy;
- Reliance on reasonably reliable representations from processing facilities or suppliers;
- Use of independent third party audits of the due diligence report if sourcing from the DRC or adjoining countries; or,
- Publication of the reports on the corporate website.

Legal Precedence

Obtaining certifications from first tier suppliers is an acceptable and authorized process for many other statutory obligations imposed by the U.S. Customs and Border Protection as well as other government agencies. Thus, many companies and issuers already have an established process to ensure compliance. Standards for the conflict-minerals provision should not be different than other statutory obligations.

Standard of Care for Determining Origin: We also believe it is important to clearly state the standard of care companies must meet in executing a reasonable inquiry and due diligence. In particular, it is critical for the regulation to state that a reasonable inquiry or effective due diligence does not require 100 percent accuracy recognizing that certainty is not possible given the situation on the ground and the fluid nature of supply chains. In light of these challenges, we believe the appropriate standard of care for executing a reasonable inquiry and due diligence should be based on a "commercially practicable effort."

Examples of a "commercially practicable effort" include, but are not limited to:

- Legal obligations (e.g., contracts, purchase orders) on direct suppliers to report on sourcing from a conflict region to the company subject to the SEC; or
- Implementation of a risk-based program that uses company control processes to verify that suppliers are providing credible information and pushing contractual obligations upstream; or
- Participation in or reliance on information gained from an industry-wide or smelter validation process.

Evidence that conflict minerals from the DRC and adjoining countries may have entered a supply chain despite a reasonable inquiry or the exercise of due diligence shall not render either unreliable if the company has engaged in behavior that is commercially practicable in conducting its inquiry or due diligence process, nor does it invalidate an issuer's determination that it did not source from the conflict regions in the DRC or adjoining countries.

Equally important, due diligence over the source and chain of custody should not require that an issuer must (1) identify all parties between the mine and first tier supplier, and (2) determine the materials used for every manufactured item. Rather, the issuer should work with its direct suppliers to push requirements to use conflict free minerals/metals upstream. A safe harbor should be created that provides that it is sufficient for an issuer to obtain representations from suppliers with whom it is in direct contractual relationship.

2. Transition Rules

We firmly believe that the SEC should establish transition rules for implementation of the regulation. Specifically, we believe a transition period is needed for the disclosure requirements, for inventory already at smelters, for products made from existing inventories, and for acquisitions.

Transition period for disclosure requirements: We believe that the SEC should create a phased-in approach for the disclosure requirements. This is not prohibited by the law and would result in a practical implementation of the rule while minimizing undue burden and cost to industry. It would also recognize that the needed infrastructure and capacity to comply with the regulation does not yet exist, which makes it practically impossible for issuers to comply with the proposed rule. This approach is also needed to prevent a *de facto* embargo against the region in Africa. Without flexibility, there is a very real danger that issuers may simply prohibit sourcing from the region entirely. This would not only defeat the goals of the legislation but it would significantly undermine the United States' and the entire international community's diplomatic efforts in the region.

Therefore, we provide the following proposal for phasing in disclosure requirements. This proposal does not create loopholes or exempt issuers. All issuers subject to the law would provide a report on their use of conflict minerals the first full year the regulation is in effect.

The SEC should adopt a transition rule that requires reporting only with respect to conflict minerals that are derived from metal smelted on or after January 1, 2012. Such a transition would accomplish several purposes. It would provide issuers an opportunity to put in place smelter verification programs covering a greater portion of the smelting industry, thus limiting the need to report unknown origins due to having material in inventory that entered the downstream flow prior to having any visibility of the origin of ore used by the smelters. Similarly, it would allow issuers time needed to communicate through their supply chains the expectation that conflict-supporting minerals will not be provided, and to work through the system inventories of metal whose origin is not known. Finally, tying the transition rule to a specific date alleviates the difficulties of filers whose reporting periods would commence prior to the beginning of 2012 by virtue of not being on calendar-year reporting.

The proposed phase-in schedule is consistent with the statutory requirements. All issuers will be held accountable for the information they provide to the SEC. If they knowingly or willfully provide false information, the issuer would be subject to SEC penalties.

Phase 1: January 2012- January 2014

Issuers would have to disclose to the SEC based on one of three options:

1. Negative Determination: If the conflict minerals are not from the DRC or adjoining countries, the issuer would furnish to the SEC a separate disclosure to the SEC stating that based on its reasonable inquiry the minerals were not sourced from the DRC or adjoining countries.

2. Positive Determination: If the conflict minerals did originate from the DRC or adjoining countries, the issuer would furnish a separate CMR report to the SEC on its due diligence and publish the CMR on its company's website.

3. Unknown Determination: If the issuer is unable to determine the origin after a reasonable inquiry, the issuer shall furnish a separate disclosure to the SEC and make it available on its website stating the following:

    - The company's conflict minerals policy
    - The company's reasonable inquiry to determine the origin
    - The conflict minerals used in its supply chain

    Such disclosure would be subject to the Commerce Department's review to determination if the issuers' statement is unreliable.

Phase 2: January 2014-January 2015

For conflict minerals in which infrastructure and capacity is operational to trace the origin of the conflict mineral(s) (likely tantalum and tin), issuers would have to disclose to the SEC based on one of two options:

1. Negative Determination: If the conflict minerals are not from the DRC or adjoining countries, the issuer would furnish to the SEC a separate disclosure to the SEC stating that based on its reasonable inquiry the minerals were not sourced from the DRC or adjoining countries.

2. Positive Determination: If the conflict minerals did originate from the DRC or adjoining countries, the issuer would furnish a separate CMR report on its due diligence to the SEC and publish the CMR on its company's website.

For minerals in which infrastructure and capacity have not been deemed operational by the Department of Commerce, issuers would have the option to submit an "Unknown Determination."

3. Unknown Determination: If the issuer is unable to determine the origin after a reasonable inquiry, the issuer shall furnish a separate disclosure to the SEC and make it available on its website stating the following:

    - The company's conflict minerals policy
    - The company's reasonable inquiry to determine the origin
    - The conflict minerals used in its supply chain

    Such disclosure would be subject to the Commerce Department's review to determination if the issuers' statement is unreliable.

Phase 3: January 2015-Onward

For conflict minerals in which infrastructure and capacity is operational to trace origin (tantalum and tin, and likely tungsten and gold), issuers would have to disclose to the SEC based on one of two options:

1. Negative Determination: If the conflict minerals are not from the DRC or adjoining countries, the issuer would furnish to the SEC a separate disclosure to the SEC stating that based on its reasonable inquiry the minerals were not sourced from the DRC or adjoining countries.

2. Positive Determination: If the conflict minerals did originate from the DRC or adjoining countries, the issuer would furnish a separate CMR report on its due diligence to the SEC and publish the CMR on its company's website.

For minerals in which infrastructure and capacity have not been deemed operational by the Department of Commerce, issuers would have the option to submit an "Unknown Determination."

3. Unknown Determination: If the issuer is unable to determine the origin after a reasonable inquiry, the issuer shall furnish a separate disclosure to the SEC and make it available on its website stating the following:

- The company's conflict minerals policy
- The company's reasonable inquiry to determine the origin
- The conflict minerals used in its supply chain

Such disclosure would be subject to the Commerce Department's review to determination if the issuers' statement is unreliable.

This approach to disclosure is appropriate given the varying levels of capacity and infrastructure available for each mineral/metal to provide data on origin. Gold, in particular, needs substantially more time and study to determine how to trace the origin and provide transparency. According to experts working on the bagging and tagging schemes and smelter validations, once a scheme is operational it takes, at a minimum, nine months for the issuers to receive information from suppliers on the origin. The proposed phased-in approach is based on this information.

We recognize that there is concern that bad actors will simply use the "undetermined" category as a way to ignore their new obligations under the law. While there will always be bad actors, the majority of issuers subject to the new requirements place a high value on corporate compliance and have every intention to comply with the new requirements. Providing false information and knowingly misleading the SEC will have significant negative repercussions for issuers and subject them to penalties under the law. Plenty of checks exist to prevent a company from making reckless reasonable inquiries to determine if conflict minerals originated in the DRC or adjoining countries. SEC penalties for noncompliance or for providing fraudulent information include civil action in U.S. District Court, fines, and trading suspensions. Those penalties alone act as a deterrent to prevent companies from not living up to their obligations.

In the alternative, if the SEC does not believe the existing regime for noncompliance and fraudulent information is a significant deterrent, we would accept additional requirements such as a company executive certifying that its company executed reasonable inquiry to determine the origin or the use of audits to verify that the issuer has a conflict minerals policy in place.

Our phase-in proposal is also consistent with the requirements of the law. Sec. 1502 (b) requires companies:

> "to disclose annually whether conflict minerals that are necessary… did originate in the Democratic Republic of the Congo…and in cases in which such conflict minerals did originate [to] submit to the Commissioner a report.."

It is our position that such language only requires and creates an affirmative obligation to disclose and submit a conflict minerals report if the issuer knows that the minerals in its products originated in the DRC or adjoining countries. If the issuer does not have actual knowledge that the minerals originated from the DRC, the authorizing statute creates no further obligation for the issuer. Therefore, it is within the SEC's discretion to create a third category for an unknown determination.

This position is further supported by the legislative history of Sec. 1502 of the Dodd-Frank Act. During the conference on the Dodd-Frank Act, the Senate offered changes to the House of Representatives Offer on Section 1502 dated June 23, 2010 (attached as addendum A to our comments) which specifically amended the Section 1502 and "clarified that only companies that source from the DRC and adjoining countries need to file anything with the SEC" by removing "or did not" from the statutory language. This change created an affirmative obligation only if the minerals in an issuer's product(s) originated in the DRC or adjoining countries. The House Offer on Section 1502 read:

> "[an issuer is required] to disclose annually…whether conflict minerals that are necessary…*did or did not (emphasis added)* originate in the Democratic Republic of Congo or an adjoining country and, in cases in which such conflict minerals did originate [to] submit to the Commission a report…"

"Did not" was purposefully removed by the Senate to narrowly tailor the disclosure and reporting requirements to apply to only issuers who have actual knowledge that the minerals in their products originated from the DRC or adjoining countries.

For Inventory Already at Smelters

The regulation should specify that inventory of conflict minerals at smelters or processing centers that was obtained prior to January 1, 2012 is not covered by the regulation to allow the institution of reliable smelter audit programs. Efforts to institute a smelter verification program vary greatly for each conflict mineral: some are more advanced than others. If there is no transition rule for conflict minerals present at smelters prior to a validation program, all smelted metals for the initial reporting will have to be reported as being of unknown origin as manufacturers will be unable to obtain the information due to that fact that all minerals are comingled in the smelting process without identifying or distinguishing between different countries of origin.

For Products Made from Existing Inventories

Based on the same rationale for the requested transition rule for inventory of conflict minerals already at smelters, we ask for a transition rule for parts and components and products manufactured with the refined metals already incorporated in finished goods or manufactured from conflict minerals already in the suppliers' inventories prior to January 1, 2012. This will allow for the design and implementation of filers' programs to impose identification requirements on their upstream supply chains. Again, absent a transition rule, filers will be forced to identify all products as containing conflict minerals of unknown origin in the initial reporting period.

In certain sectors, such as automotive or aerospace, the issuer will have service parts that are used in the repair and maintenance of the products in the stream of commerce and which may or may not be currently produced and sold. Many times these items have a supply chain that is distinct from that of the product currently being manufactured and sold thus increasing the burden on the issuer. While issuers will work to ensure that this supply chain is also conflict free, the consumer has a much more limited choice in purchasing the item. Additionally the test of "necessary to the functionality" may change depending upon whether the

item is being incorporated into a final consumer product or being sold as a replacement part (e.g., a radio). Parts or components in the repair or maintenance supply chain obtained or manufactured prior to January 1, 2012 must be subject to the above transition rule.

For Stockpiled Metals

There are significant stockpiles of refined metals in the global market, including at metal exchanges for gold and tin. We recommend that the regulation specify that stockpiles of metals in inventory prior to January 1, 2012 not be covered by the regulation. The minerals from which these metals were derived were extracted and refined before supply chain transparency systems were implemented. Requiring country of origin inquiry and due diligence on such inventories would not further the policy intent of the law and could have unintended impact on global metals markets.

For Acquisitions

The rule should provide for the circumstance where an issuer acquires or otherwise obtains control (for example through foreclosure) over a manufacturer that previously has not been obligated to provide reports under Section 1502 and therefore is unlikely to have instituted any process to determine the origin of conflict minerals in its products. In such cases, the issuer should not be required to report on products manufactured by the acquired firm until the end of the first reporting period that begins no sooner than 8 months after the effective date of the acquisition. This lead-in period is similar to the time that will elapse between the adoption of final rules implementing the Dodd-Frank Act and the commencement of the reporting period applicable to calendar-year filers, and is necessary to allow time for the acquiring issuer to implement its conflict minerals reasonable inquiry and due diligence processes throughout the supply chain of the acquired firm.

3. DRC Conflict Free or Not DRC Conflict Free Categorization

First, the rule should make clear that issuers are not required by anything in the statute or the rule to physically label their products in any way with regard to the presence or absence of conflict minerals. Sec. 1502 only requires companies that "did" source from the conflict regions in the DRC or adjoining countries to submit a conflict minerals report (CMR) and only instructs that a product "*may* be labeled as 'DRC conflict free' if the product does not contain conflict minerals…" (Emphasis added). It does not mandate that the SEC require issuers who do not know the origin of the conflict minerals to file a CMR or to label their products as not DRC conflict free.

The SEC should create a third category, such as "indeterminate origin", for products manufactured or produced with conflict minerals that issuers, despite their best efforts, are unable in the first years of their programs to determine origin. At least for the first years, issuers should not be required to file a CMR for such minerals. Requiring issuers to submit a CMR and/or identify their products as "not DRC conflict free" when the issuer has not been able to determine origin after making reasonable inquiry would significantly harm global brands, place U.S. companies at a competitive disadvantage, and damage investor relations even though the issuer has in a place a conflict minerals policy prohibiting the use in it supply chain of conflict

minerals from the DRC or adjoining countries. Moreover, such a requirement is outside the scope of the legislative mandate.

4. Limit Applicability

The four minerals identified as conflict minerals by the legislation are used in an overwhelming number of manufacturing processes and products. Some are used in significant quantities and are critical to the end use of the product; others are used in trace amounts or are the byproduct of a manufacturing process. The regulation needs to provide clear guidance on the scope of coverage in several areas. First, we suggest that the scope of coverage should not include minerals used in chemical processes; those present in machine tools, machinery, and other equipment used in the production of goods; or minerals that are a byproduct, or are found in trace amounts. Second, the SEC should acknowledge that the derivatives covered are tin, tungsten, tantalum, and gold. Third, recycled material must not be treated as if it originated from the DRC or adjoining countries. Doing so would ignore the very nature of recycled materials and undermine a growing trend to use recycled materials to reduce manufacturers' footprint on the environment. Lastly, the requirements on issuers should reflect the level of control the downstream company has over the manufacturing operations, the smelter, and the mine. Many of the issuers have little to no control over the design of the components or assemblies purchased or the direct purchasing of metals.

Scope of Coverage

We encourage the SEC to avoid defining necessary to include:

– Conflict minerals included in a product for any reason because that conflict mineral would be contributing to the product’s economic utility.

– Manufacturing tools, equipment, or processes that use conflict minerals. If it is not tailored to exclude those scenarios, nearly every manufactured good will contain trace amounts of conflict minerals. Because production machinery has a useful life that can extend over many years, existing machinery incorporating conflict minerals of unknown origin will require reporting of “unknown” status of all goods produced by use of that machinery for many years. At the same time, such reporting will do nothing to discourage the use of conflict minerals from conflict mines.

– Chemical catalysts. Metal catalysts are used to chemically react and manufacture a range of materials from solvents to fuels to polymers. The catalysts are typically not consumed in the reaction, and can be reclaimed, reprocessed, and reused. Trace levels of the catalyst, however, will be found in the reacted manufactured product, but they do not contribute to the performance of the final product such as the polymer. Due to use of tin catalysts, residual tin may be present in parts per million or less in products such as adhesives, films, tapes, resins, silicone, urethane, and certain coatings. By extension, the tin will be present at even lower levels in any products that incorporate these materials. Gold or other metals could also be used in catalysts, resulting in residual levels of those metals. The metal catalysts should not be deemed necessary to the production of the adhesives, etc.

- Conflict minerals naturally occurring in a product or that are purely an unintentional byproduct of the product.

Derivatives of the Conflict Minerals

The final rule should apply to the specific minerals: cassiterite, columbite-tantalite, gold and wolframite, and to the specific derivatives of those minerals: tin, tantalum, gold and tungsten. The Act does not delineate particular mineral derivatives. In surrounding legislative discussions, gold, tin, tungsten and tantalum are identified. We believe it is critical to state that the rule only applies, at least initially, to tantalum, tin, gold, and tungsten. Without this specificity, the regulation will create much ambiguity. If the State Department chooses to designate additional minerals per the Act, then the new minerals and derivatives can be introduced into the definitive list provided in the rules according to due process of revision and with sufficient advanced notice to implement the requirement to new minerals. For legal certainty, the rule should be structured to limit the list of derivatives that must be considered to the four listed above.

Recycled Materials

The final rule should include an alternative approach for recycled or scrap sources but the approach as proposed requiring issuers using conflict minerals from recycled or scrap sources to furnish a CMR including a certified independent private sector audit is unworkable and will significantly discourage the use of recycled materials. Issuers who purchase metals as raw material should be able to determine based on a reasonable inquiry if the metals are recycled or scrap. The same standard for determining that the minerals did not originate from conflict mines in the DRC or adjoining countries should apply to recycled materials. Under such a system, issuers are still accountable to the SEC for providing fraudulent information and thus can not simply state that their metals are recycled with inquiring of the origin.

Subjecting recycled materials to the same requirements as “conflict full” material intrinsically does not make sense. By the very nature of the material, an issuer using a recycled material will not be able to provide any of the details required in a CMR. Recycled materials may be weeks or decades old. In any event, the origin is impossible to determine. Instead, issuers should have a reasonable basis for believing the material is recycled and maintain auditable records to support the determination.

We urge the SEC to reconsider its treatment of scrap and recycled conflict minerals. There is not a statutory requirement for issuers to execute due diligence and create a CMR for recycled or scrap conflict minerals. We believe recycled conflict minerals should have parity with conflict minerals originating from a conflict-free mine so as to encourage manufacturers to use recycled and scrap materials, to reduce the demand for minerals that would support armed groups in the DRC and adjoining countries, and to maintain a fair market for metals and minerals. This could be accomplished by providing that after a manufacturer conducts a reasonable inquiry into the source of its conflict minerals no further action is required if either: (1) the minerals were determined to originate not from the DRC or adjoining countries, or (2) the minerals originated from a scrap or recycled source.

Control over Manufacturing Operations

1. Downstream issuers (OEM's) purchase components or subassemblies that contain conflict minerals.

Many companies purchase parts, components, or subsystems based on certain performance capabilities without specifying the materials. Companies further upstream manufacturing those products may not disclose the materials used to manufacture the part, component, or subsystem, for many reasons.

First, the information concerning minerals specifications may be considered proprietary to the supplier. Disclosure of the materials used to create the item would then reveal the company's trade secrets. For those products where the company does not have access to or control of material content for a given supplier, data collection on the presence of conflict minerals would be nearly impossible for many companies and would create disincentives for suppliers to sell products to U.S. companies or operate in the United States as the supplier would have to disclose its intellectual property.

Second, manufacturing operations often operate in a just-in-time fashion. Where the issuer does not specify specific materials, the supplier will use the material that is available at the time. Let's consider a part or component that can be manufactured using two different metals. In one instance the metal may have been refined from a conflict mineral. In another, it may not have been. Where the issuer does not specify the material or creates performance specifications that are not dependent upon a conflict mineral, it will not be able to apply the downward pressure necessary to change the behavior of suppliers in its supply chain.

2. Contract Manufacturing

The rules should apply to issuers that contract to manufacture products only if the issuer directly specifies the conflict minerals as an ingredient, feature, or component of the product or process. For example, if a blueprint specifies the use of a certain amount of gold plating on an electrical contact, the issuer is explicitly specifying and directing the use of a conflict mineral in the product or process. On the other hand, if the issuer contracts for the manufacture of a product and requires only a certain capability or performance by the product but does not specify the use of a conflict mineral – but the supplier/manufacturer chooses to use a conflict mineral - then the rules should not apply to that issuer. Issuers that solely contract for the manufacture of goods, without specifying the use of conflict minerals should not be required to report on the conflict minerals contained in the relevant products.

3. Sourcing of Finished Goods

When an issuer sources finished goods from a manufacturer and sells those goods under the issuer's trademark, the issuer should not be required to report on the conflict minerals contained in those goods. Congress did not intend to include retail sales (or product distribution) within the scope of the reporting requirement, and the sourcing and resale of finished goods is essentially a distribution or retail function. The manufacturer of the goods with control over production should be the party to report in this situation.

4. Licensing

An issuer should not be required to disclose to the SEC information on conflict minerals used by another company licensed to use the issuer's trademark. In normal licensing arrangements, the licensor will obligate the licensee to conform to specified quality and other specifications, but will not dictate the means by which those specifications are met. This degree of “control” should not subject the licensor to obligations under the rule. Licensors do not manufacture, contract for manufacture, or sell the products under license.

5. Reports to the SEC

The legislation does not specify that issuers should disclose their use of conflict minerals in their annual reports. Rather the legislation only requires for issuers “to disclose annually whether the conflict minerals did originate in the DRC or adjoining countries.” Issuers whose conflict minerals did originate from the DRC or adjoining countries must “submit to the Commission a report.” However, there is no specificity for either disclosure requirement that it be made in the annual report or as an addendum to the annual report. Therefore, we request that issuers be allowed to disclose to the SEC for the former by furnishing a separate disclosure to the SEC as part of the issuer’s quarterly obligations or in a stand alone report. For the latter, the issuer should furnish, not file, the CMR, to the SEC as a stand alone report or as part of a quarterly report but not as part of the annual report.

Sincerely,

Advanced Medical Technology Association
American Apparel & Footwear Association
American Association of Exporters and Importers
Consumer Electronics Association
Consumer Electronics Retailers Coalition
Emergency Committee for American Trade
IPC-Association Connecting Electronics Industries
Joint Industry Group
National Association of Manufacturers
National Foreign Trade Council
National Retail Federation
Retail Industry Leaders Association
TechAmerica
USA Engage

Via email: rule-comments@sec.gov