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**BY [E-MAIL]**

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

***Re: File Number S7-40-10***
***Proposed Rules for Implementing the Conflict Minerals Provision of Section 13(p) of the Securities Exchange Act of 1934***

Dear Ms. Murphy:

This letter is submitted on behalf of Business Roundtable, an association of chief executive officers of leading corporations with a combined workforce of more than 12 million employees in the United States and nearly $6 trillion in annual revenues. Member companies comprise nearly a third of the total value of the U.S. stock market and represent nearly a third of all corporate income taxes paid to the federal government. Annually, member companies pay $267 billion in dividends to shareholders and the economy. Roundtable companies give more than $7 billion a year in combined charitable contributions, representing nearly 60 percent of total corporate giving. They are technology innovation leaders, with $86 billion in annual research and development spending – nearly half of the total private R&D spending in the U.S.

We are submitting this letter in response to the December 15, 2010 request for public comments by the U.S. Securities and Exchange Commission ("SEC" or "Commission") on its Proposed Rules for Implementing Section 13(p) of the Securities Exchange Act of 1934 ("Proposed Rules"), issued pursuant to Section 1502 (the "Conflict Minerals Provision" or "Provision") of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), and set forth in the Commission's accompanying release ("Proposing Release").

Section 13(p) directs the SEC to promulgate disclosure and reporting regulations regarding the use of conflict minerals from the Democratic Republic of Congo (the "DRC") and adjoining countries (together, the "DRC countries"). We support the underlying objective of addressing atrocities occurring in that part of the world, and support the Commission's efforts to implement the Conflict Minerals Provision to carry out this goal in a cost-effective manner. In this regard, we support the Commission's flexible approach to determining what constitutes a reasonable country of origin inquiry and what processes will satisfy due diligence, as it recognizes that different issuers may comply in different ways.

However, we are concerned that the Commission's Proposed Rules are more expansive than the statutory requirements and, as such, will impose more significant expense on far more companies than the statute requires. Similarly, we believe that the Commission's estimated cost of complying with the Provision's disclosure scheme, including the $25,000 estimated average cost for obtaining a private sector audit of an issuer's Conflict Minerals Report grossly underestimates the actual compliance cost. We urge the Commission to implement the Conflict Minerals Provision in a manner that is most consistent with the ability of American companies to create jobs and compete on a worldwide scale. Our suggestions are intended to achieve this goal.

**The Disclosure Requirements Must Be Phased-In To Reflect The Lack Of Infrastructure Necessary To Trace And Audit Supply Chains.**

As an initial matter, it is important to recognize that while there are a number of private sector initiatives underway to develop industry-specific protocols for removing conflict minerals from supply chains, as well as efforts by international organizations, the infrastructure simply is not yet in place for companies to be able to determine that their sources of supply are "DRC conflict free." Section 13(p) of the Dodd-Frank Act is intended to, and will, change this state of affairs. Processes to make traceability of conflict minerals possible, such as smelter validation programs, will be developed. However, given the complexity of the supply network, many issuers will not be able to gain assurances about their sources of supply in the next fiscal year, or even the fiscal year after that. As a result, under the Proposed Rules, a large number of issuers will be forced to treat their supplies as not "DRC conflict free" and engage in the due diligence necessary to furnish a Conflict Minerals Report. The Commission's assumption that only 20% of affected issuers will have to furnish an audited Conflict Minerals Report fails to account for this reality, thus drastically underestimating the number of companies that will be subject to the costliest requirements in upcoming fiscal years. Moreover, because so many of these Conflict Minerals Reports will contain unknown source determinations, they will not provide the public with any meaningful information.

To avoid these harmful consequences, the Commission should implement Section 13(p) in a manner that recognizes the underdeveloped state of the existing infrastructure for supply chain tracing. One way to do this would be to adopt a phased approach to the disclosure requirements. Initially, issuers subject to the Provision would be able to fulfill their statutory

obligation by disclosing that they have conflict mineral sourcing policies in place, but due to a lack of infrastructure, are unable to determine the origin of the conflict minerals. No extra reporting would be required. Once the necessary infrastructure schemes are in place, such as smelter validation programs and "bagging and tagging," additional disclosures (and an audited Conflict Minerals Report, if applicable) would be required. We note that the infrastructure for different conflict minerals may become operational at different times, and the phased-in approach we are suggesting needs to recognize this. In this regard, Section 1502(c) requires the Secretary of Commerce to develop, within 30 months after the enactment of the Dodd-Frank Act, a listing of all known conflict mineral processing facilities worldwide. A phased approach would allow issuers to take advantage of this information in conducting their reasonable country of origin inquiries and due diligence.

The Commission also should provide a transition period for existing inventory and stockpiles. Absent such a transition rule, issuers will be forced to identify all such products as being of unknown origin in the initial reporting period.

**The Provision Should Apply Only To Issuers That Are Manufacturers And Certain Issuers That Contract To Manufacture.**

The Conflict Minerals provision should apply only to issuers who are manufacturers and those who contract to manufacture as discussed below. The Commission's Proposing Release states that the statutory language raises the question of whether the Provision is applicable to issuers who contract to have their products manufactured. The Commission proposes to apply its rules both to issuers that directly manufacture products and to those that contract the manufacturing of their products. While we agree that issuers should not be able to intentionally evade the Act's disclosure scheme, the Provision's applicability should not hinge on a distinction based on an issuer's business model. Accordingly, the Provision should apply to both issuers that manufacture their own products and issuers who contract to manufacture, but should not, for example, apply to retailers or service providers who, in the process of contracting with suppliers, might have some influence over the design of a device or product, but have no significant influence over the manufacturing process itself. In other words, it should apply to, but not be limited to, issuers who control, manage or direct the manufacturing process, including contracting for, procuring, or specifying conflict minerals to be used as an ingredient, feature or component of a product. We believe this approach is consistent with the statutory mandate without competitively disadvantaging issuers that have similar influence in the supply chain but follow different business models.

**The Definition Of Conflict Minerals "Necessary" To A Product Should Be Narrowly-Tailored To Advance The Provision's Purpose.**

The Conflict Minerals Provision applies to issuers for whom conflict minerals are "necessary to the functionality or production of a product." The Proposed Rules require these issuers to engage in a reasonable country of origin inquiry, and if necessary, engage in due diligence and

provide an audited Conflict Minerals Report. These requirements are quite burdensome, and we believe that they should not be applicable to companies positioned at the end of the supply chain who use a very small amount of conflict minerals in the manufacture of their products. Subjecting issuers with such a slight impact to the Provision's requirements would be burdensome and is not necessary to fulfill the legislation's purpose. In fact, implementing a *de minimis* threshold would advance the legislation's purpose. By excluding from coverage users of insignificant quantities of conflict minerals, attention would not be diverted from the disclosures of the significant users of conflict minerals. Accordingly, we suggest that the Commission include in its final rules an exemption for issuers situated at the end of the supply chain whose use of conflict minerals is *de minimis*.

Moreover, we believe that conflict minerals that occur naturally in a product or that are an unintentional byproduct should not trigger disclosure obligations under the Provision. Given that the central purpose of the Provision appears to be to influence issuers' sourcing behavior, there is no reason to subject issuers who do not intentionally obtain conflict minerals to the disclosure scheme. Therefore, the final rules should expressly exclude naturally occurring or unintended conflict minerals from the definition of "necessary to the functionality or production of a product."

Finally, we support the Commission's statement in the Proposing Release that conflict minerals necessary to the functionality or production of a physical tool or machine used to produce a product would not be considered necessary to the production of the product.

**Reasonable Reliance on Supplier Representations Should Satisfy The Reasonable Country Of Origin Inquiry And The Obligation To Conduct Due Diligence.**

While the Proposing Release's flexible approach allows an issuer to satisfy its diligence obligations in many ways, we suggest that one way an issuer should be able to do so is by reasonably relying on the representations of its suppliers. Under this approach, those issuers who receive reasonably reliable assurances from their suppliers that their conflict minerals did not originate in the DRC countries or are "DRC conflict free" should be found to have satisfied their reasonable country of origin inquiry or due diligence obligation. An issuer should be able to demonstrate reasonable reliance on suppliers in one of several ways. For example, issuers can impose contractual obligations on their direct suppliers to exclude conflict minerals mined in the DRC countries or that are not "DRC conflict free." Other issuers may rely on certifications received from, or notifications to, suppliers that the components or products that were supplied do not contain conflict minerals that are not "DRC conflict free." Permitting issuers to rely on their suppliers recognizes that those issuers closest in the supply chain to the point of extraction are in the best position to determine the source of conflict minerals. [1] Disclosures

[1] Business Roundtable notes that the Kimberly Process Certification Scheme, the process designed to certify the origin of rough diamonds from conflict free sources, relies on a "System of Warranties" under which buyers

made by those issuers therefore should be the focal point of the required conflict minerals disclosure.

**Certain Issuers Should Not Be Required To Make Any Reasonable Country Of Origin Inquiry At All, Provided They Disclose This Fact.**

The Conflict Minerals Provision requires issuers to disclose "whether" their conflict minerals originated in the DRC countries, and, in the case of a positive determination, to provide a Conflict Minerals Report. The legislation does not impose any obligation on an issuer who determines that the conflict minerals did not originate in the DRC countries to make any disclosure beyond that fact, nor does it specify how the issuer is to determine that the conflict minerals did not originate in the DRC countries. In contrast, the Proposed Rules require issuers to make a reasonable country of origin inquiry as to whether their conflict minerals originated in the DRC countries and describe this inquiry to support their determination. Given the absence of a statutory directive to do so, the Commission should not impose this additional requirement on issuers that are not using conflict minerals originating in the DRC countries.

**The Required Audit Is Of The Conflict Minerals Report, Not Of The Supply Chain.**

The Commission should clarify that, as set forth in the statute, the required independent private sector audit is of the accuracy of the issuer's Conflict Minerals Report in representing the due diligence processes in place at the reporting company. The audit should evaluate the quality of the issuer's due diligence measures, not the accuracy of the reported supply chain.

**Conflict Minerals Disclosure Should Not Be A Part Of The SEC's Periodic Reporting System; Website Disclosure Should be Sufficient.**

The Proposed Rules require that an issuer disclose whether its conflict minerals originated in the DRC countries in the body of its annual report on Form 10-K. If the issuer cannot determine that its conflict minerals did not originate in the DRC countries, the Conflict Minerals Report must be furnished as an exhibit to the annual report. However, there is nothing in the statute that suggests these disclosures, or the Conflict Minerals Report itself, should be provided as a part of the periodic disclosure system established under the Securities Exchange Act of 1934 ("Exchange Act") to provide information to investors. Moreover, as the Commission itself has recognized, the nature and purpose of disclosures under the Conflict Minerals Provision are qualitatively different from the nature and purpose of the disclosure of information that has been required under the periodic reporting provisions of the Exchange Act. As a result, an issuer should be able to make the required disclosures, including the Conflict Minerals Report, available exclusively on its website.

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and sellers guarantee that diamonds are conflict free, based on personal knowledge and/or *written guarantees provided by the supplier* of the diamonds. The Kimberly Process Certification Scheme has been endorsed by the United Nations and by federal legislation passed in 2003 (the Clean Diamond Trade Act).

We believe that an issuer's web site, which in many instances already contains information about corporate social responsibility matters, is the most appropriate location for conflict minerals disclosures. The SEC itself has been encouraging the efforts of issuers to use their web sites for disclosure purposes, as noted in its 2008 guidance on the "Use of Company Web Sites."[2] Therefore, consistent with the SEC's stated goal of encouraging issuers to "develop their web sites in compliance with the federal securities laws so that they can serve as effective information and analytical tools," we believe that an issuer should be able to satisfy its requirements under the Provision by making the required disclosures available on its website.

Alternatively, if conflict minerals disclosures are required as part of the SEC's periodic reporting system, Business Roundtable supports the Commission's determination that the Conflict Minerals Report be furnished, and not filed. However, the deadline for filing the Form 10-K does not provide issuers with sufficient time to perform due diligence on their use of conflict minerals in the prior fiscal year and obtain a private sector audit. Accordingly, the Conflict Minerals Report should be furnished within 120 days of the issuer's fiscal year-end in a form specifically developed for conflict minerals disclosures.

Thank you very much for considering our comments. We would be happy to discuss our concerns and recommendations, or any other matter that you believe would be helpful. Please contact Larry Burton, Executive Director of Business Roundtable, at (202) 872-1260.

Sincerely,

John Engler

JE/ab

C: The Honorable Mary L. Schapiro, Chairman
The Honorable Kathleen L. Casey, Commissioner
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner
Mr. David M. Becker, General Counsel and Senior Policy Director
Ms. Meredith B. Cross, Director, Division of Corporate Finance

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2 Commission Guidance on the Use of Company Web Sites, 73 CFR 45,862, Release No. 34-58288 (August 1, 2008), available at: http://www.sec.gov/rules/interp/2007/34-58288fr.pdf ("SEC Web Site Release")