TIAA CREF

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March 2, 2011

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

RE: Disclosure Related to Conflict Minerals; File No. S7-40-10

Dear Ms. Murphy,

I am writing on behalf of Teachers Insurance and Annuity Association ("TIAA") and College Retirement Equities Fund ("CREF") (collectively, "TIAA-CREF") to provide comments on the proposed addition of rule 13(p) to the Securities and Exchange Act of 1934, which would implement Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[1] TIAA-CREF is a national financial services organization and the leading provider of retirement services in the academic, research, medical and cultural fields, with $451 billion in combined assets under management as of December 31, 2010. CREF, one of the country's largest institutional investors, holds shares in over 7,000 publicly traded companies. As fiduciaries charged with maximizing the collective value of over 3.7 million participants' retirement savings, we have been a leading advocate for more than 30 years on behalf of shareholder rights, good corporate governance, and social responsibility.

We commend the Securities and Exchange Commission ("SEC" or "Commission") for its thoughtful and prudent efforts to implement section 1502 of the Dodd-Frank Act. TIAA-CREF believes that appropriate and balanced disclosure will inform investors about supply chain risks related to the sourcing of conflict minerals, including support for armed conflict, human rights abuses, disruption of operations related to social unrest, pressure from corrupt foreign officials, or harm to companies' local or global reputation. We also believe that disclosures will be most effective if they allow sufficient

[1] Release No. 34-63547; File No. S7-40-10

flexibility for each company to report in a manner appropriate for its unique business circumstances, without sacrificing consistency or comparability. In this letter, we selectively respond to questions that address this balance.

Covered Persons

In Section B and questions 1-20, the Commission asks for comment on its definition of "covered persons" for purposes of rule 13(p). We agree with the Commission's proposal to include both small and foreign private issuers as "covered persons." We also support the Commission's proposal to include mining companies but exclude pure retailers, other than those that specifically contract for the manufacture of private label products and influence the manufacture of those products.

We believe that it would be unlikely that conflict minerals could be effectively traced to their origins without full participation of the entire supply chain. Exempting companies that may be involved in the supply chain may disrupt the efficient flow of information. We believe that the participation of mining companies, as the source of conflict minerals, is particularly important to effective determination of the origins of these minerals.

However, requiring disclosure from companies whose use of the mineral is indirect or lies outside the manufacturing supply chain would dilute the value of the rule and add little value for shareholders. These companies would include pure retailers that exert no influence on design or manufacture of products, or manufacturers that use tools that may contain conflict minerals.

For the sake of clarity for issuers about whether they are bound by Rule 13(p), we believe that it would be helpful to define the term "necessary." We believe that the following comment is consistent with the spirit of the rule and could serve as an example of how to clarify the boundaries of the rule:

> "[t]he conflict mineral is intentionally added to the product; or [t]he conflict mineral is used by the [issuer] for the production of a product and such mineral is purchased in mineral form by the [issuer]and used by the [issuer]in the production of the final product; and[t]he conflict mineral is essential to the product's use or purpose; or[t]he conflict mineral is required for the marketability of the product."[2]

We also agree with the Commission that all minerals that substantially contribute to the ongoing conflict, including gold, in the DRC pose similar

[2] Multi-stakeholder letter, page 6. http://sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-67.pdf

risks for shareholders and ought to receive equal treatment. As discussed below, however, we believe that it may be appropriate to treat recycled or scrap minerals, or minerals drawn from existing stocks, differently under the rule.

Country of Origin

Questions 22-36 in Section C request comment on the Commission's proposal that companies should "disclose whether…conflict minerals originated in DRC countries."

TIAA-CREF generally supports the Commission's proposal to require companies to conduct and disclose reasonable country of origin inquiries. The Commission's proposal should also require filers to disclose a description and the results of its inquiry. We also concur that companies should "maintain reviewable business records to support its determination," which will provide additional assurance of the company's conclusions.

Transparency as to the method and results is important to ensure that companies perform rigorous inquiries. If an issuer fails to undertake a thorough country of origin inquiry, they might mistakenly fail to file a conflict minerals report. Such a result would undermine the intent of the law and place other companies in the same supply chain at risk of receiving inaccurate information about the status of their minerals.

Because the processing facility [smelter] is generally understood as the key link in the minerals supply chain,[3] the final rule should require that the

[3] See for example OECD Due Diligence Guidance for responsible supply chains of minerals from conflict-affected and high-risk areas: "internal control mechanisms based on tracing minerals in a company's possession are generally unfeasible after smelting, with refined metals entering the consumer market as small parts of various components in end products." (page 19) http://www.oecd.org/dataoecd/62/30/46740847.pdf ; and The United Nations Group of Experts Due Diligence Guidelines, as adopted by the U.N. Security Council: "The guidelines additionally recommend the establishment of an institutionalized mineral supply mechanism that would oversee and support the audits of smelter/refinery due diligence" http://www.un.org/News/dh/infocus/drc/GOE_press_backgrounder.html

reasonable country of origin inquiry be tied to a process for determining the origin of ores at the smelter. TIAA-CREF believes tying reasonable country of origin inquiry to the smelter creates the needed transparency required by the law and provides sufficient flexibility and guidance to companies about what the Commission considers reasonable while allowing an issuer to obtain the needed information based on its circumstances.

Although it is important that companies retain sole responsibility for the accuracy of their reporting, we support the use of supplier certification (at this time, to the processing facility [smelter]), as a reasonable means of conducting an inquiry. This method is cost-effective because it avoids duplication of effort, and provides incentives for cooperation throughout the supply chain to ensure the quality of monitoring systems.

We further suggest that the Commission consider requiring disclosure of country of origin to provide a further level of verifiability to the data. We would support a requirement for companies to disclose when they are unable to confirm that their minerals originated outside the DRC. This would help to provide incentives to make a rigorous inquiry into the source of the minerals.

We concur with the Commissions proposal that the report should be filed in the annual report (form 10-K, 20-F, or 40-F). This requirement will be more cost effective than filing a separate report and is appropriate in light of the materiality of the information requested. We believe that the higher standard of accountability accorded to information that is filed as a part of the annual report will raise the credibility of the disclosures and provide investors with greater confidence in the use of this information.

Conflict Minerals Report

Questions 37-55 request comment on the conflict minerals report required of companies that are unable to confirm that their minerals originated outside the DRC.

In general, we concur with the proposal for the Conflict Minerals Report as outlined in Section D.1.

Where the source of minerals cannot be confirmed, we believe it would be most accurate to allow companies to use indeterminate language such as “may not be DRC conflict free,” but not language that would suggest a presumption that minerals would be conflict free absent specific evidence to the contrary. Moreover, over time the information systems necessary to trace these minerals will likely improve. We suggest that, after a reasonable time

interval, the SEC consider reviewing whether a higher standard might be warranted.

The conflict minerals report should include disclosure of the companies' conflict mineral policies; its approach to supply chain due diligence and risk assessment; its remediation policies in cases of non-compliance; and the results of third-party smelter-level audits. We support the use of industry-wide processes to improve compliance and reduce redundancy. Regardless of whether companies conduct their inquiries singly or as a part of industry collaboration, all processes should be, as the Commission notes, consistent with national or international standards and include an independent third-party audit.

Such processes and transparency standards should be described in the issuer's conflict minerals report. This report should include the greatest possible specificity about mine location and transport routes given information system capabilities for all conflict minerals regardless of whether the minerals are conflict free. Companies should also specify the process used to determine this information, and alternative criteria used to establish the status of minerals if the source location is not known.

Consistent with the country of origin report, we believe that as material information this report should be filed, not furnished as proposed by the Commission, as a part of a company's annual report.

Due Diligence Standard for Recycled and Scrap Minerals

Questions 51 and 63-68 in Section D.3. request comment on whether certain categories of recycled and scrap minerals, specifically gold, should be exempt. TIAA-CREF supports the Commission's proposal for recycled or scrap minerals.

The intent of the statute is to provide investors with information about whether minerals used in manufacturing processes may contribute to the ongoing conflict in the DRC. We are comfortable that legitimate recycled post-consumer or scrap minerals do not contribute to the crisis and can be therefore identified as "DRC conflict free." While we understand that this concern applies most particularly to gold, it may apply to all conflict minerals.

However, we are concerned that this exemption could be used to circumvent the intent of the statute if manufacturing companies received minerals that had been recently mined and altered to appear to be recycled or scrap. We believe that it is important that users of recycled or scrap content disclose the due diligence process by which they determine the origin of this material, and

confirm that they were obtained from post-consumer or legitimate end-user sources.

We would support comparable standards for stockpiled minerals. Though these minerals may have originated in mines that support the conflict, we believe that it would be impractical to ask companies to trace the origin of these minerals. We believe that these minerals should be exempt as long as companies can document that they were obtained and held outside DRC and adjacent countries prior to the implementation of rule 13(p).

Summary and Conclusion

In closing, we thank the SEC for providing the public with the opportunity to respond to the questions outlined in the proposed rule. We commend the Commission for identifying and analyzing the critical issues raised by the statute and support the final adoption of a rule on this topic. If you would like to discuss any of the issues raised in our letter, please contact me at 212-916-4344 or my colleague John Wilson 212-916-4897.

Sincerely,

Jon Feigelson
SVP – General Counsel and Head of Corporate Governance