March 2, 2011

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

Re: File Number S7-40-10: Conflict Minerals Proposed Rules

Dear Ms. Murphy:

We are writing in response to the Securities and Exchange Commission (SEC) request for comments on the proposed rules to implement the Dodd-Frank Act Section 1502 - Conflict Minerals.

With C$5 billion in assets under management, NEI Investments' approach to investing incorporates the thesis that companies integrating best environmental, social and governance (ESG) practices into their strategy and operations will provide higher risk-adjusted returns over the long term. Through our company evaluations, our active engagement with the companies in our funds, and our issues research, we have developed considerable insight into good practices and weaknesses in corporate supply chain management, which we endeavour to share in the context of consultations on public policy and standards. We invest in many companies listed on U.S. exchanges.

The link between mining, processing and trade in conflict minerals and the ongoing conflict and human rights abuses in the Democratic Republic of Congo (DRC) is well-documented[1]. Not only is the situation unacceptable from a humanitarian perspective, it also exposes companies that rely on conflict minerals to significant reputational and supply chain risk, which in turn creates risk and uncertainty for investors. The issue of conflict minerals in the supply chain affects a wide range of industries, including electronics, machinery and equipment, automobiles, aerospace and jewellery. Investors need consistent and comparable data to evaluate the conflict minerals exposure and supply chain policies and practices of different companies, to inform investment decision-making and allow for targeted corporate engagement.

We commend the SEC's leadership in developing the proposed rules, which present an important opportunity to increase transparency regarding the conflict minerals supply chain. In our earlier submission[2] on the rulemaking under Section 1502, we suggested that the SEC should focus on the following issues:

- Clarify which companies are required to disclose.
- Clarify expectations on what should be disclosed.
- Maintain flexibility to adapt to emerging standards and good practices.

[1] See, for example: **United Nations Security Council.** Final report of the Group of Experts on the DRC, submitted in accordance with paragraph 6 of Security Council resolution 1896 (2009). [Online] 2010. http://www.un.org/ga/search/view_doc.asp?symbol=S/2010/596; **Business for Social Responsibility.** Conflict Minerals and the Democratic Republic of Congo. [Online] 2010. http://www.bsr.org/reports/BSR_Conflict_Minerals_and_the_DRC.pdf.

[2] **NEI Investments.** Re: SEC regulatory initiatives under the Dodd-Frank Act: Specialized Disclosures – Section 1502 – Conflict Minerals. [Online] 2010. http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-71.pdf

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Although we offer some specific suggestions for enhancements, in general the proposed rules strike a good balance between reflecting the intent of Congress to address the humanitarian emergency in the DRC (as expressed in Section 1502(a) of the Dodd-Frank Act[3]), and recognising the limitations of what is practicable given the current state of knowledge and practice in the conflict minerals supply chain. In the light of our earlier submission, we welcome SEC's focus in the proposed rules on clarifying which companies are required to disclose, and what information should be disclosed.

In this letter we set our main observations and recommendations with respect to the proposed rules. Detailed responses to the specific questions in the SEC consultation document[4] are set out in the annex following the letter.

Stimulate global adoption of conflict minerals provisions by including foreign issuers

As far as possible, the rules should apply to foreign issuers that fall under SEC jurisdiction. As in the case of the Sarbanes-Oxley Act, Canadian issuers covered by the multijurisdictional disclosure system[5] (MJDS) should also be required to follow the conflict minerals rules. This will reduce the extent to which U.S. companies, and their investors, will be taking on a unique level of responsibility for efforts to improve conflict minerals supply chain management. It will also create impetus to address conflict minerals supply chain transparency at a global level. Foreign issuers that are already required to report under the SEC conflict minerals rules will likely support similar provisions in their home markets, for competitive reasons. Conversely, by not including foreign issuers, the development of conflict minerals supply chain transparency could be slowed, which would be contrary to the intent of Congress.

Similar action can be expected in other countries in response to the SEC's leadership, and as global awareness of the conflict minerals issue increases. In Canada, for example, conflict minerals legislation has already been tabled[6]; and the Canadian Securities Administrators (CSA) pay close attention to SEC rule-making developments[7]. As early adopters of conflict minerals supply chain due diligence and disclosure, U.S. issuers may gain an advantage in the long term – as may Canadian issuers that are required to report under the SEC rules.

Close loopholes for avoiding the requirement to disclose on conflict minerals

It is clear from Section 1502(a) of the Dodd-Frank Act that the intent of Congress in calling for the rules was to contribute to positive change in the humanitarian situation in the DRC, by preventing financing from the conflict minerals trade from reaching armed groups involved in the conflict. At the same time, the rules could protect investors by allowing them to better judge the exposure of issuers to conflict minerals risk. The rules will not be effective in meeting these objectives if loopholes are created that allow key players in the conflict minerals supply chain to avoid the requirement to disclose, or that encourage the development of new supply chain pathways designed expressly to circumvent the requirement to disclose or "launder" conflict minerals from the DRC. It is not unreasonable to suppose that some companies exposed to conflict minerals risk might resort to measures such as restructuring to take advantage of loopholes in the rules that would allow them to avoid disclosure – just as companies employ measures to reduce their tax liabilities.

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[3] **United States Government Printing Office.** Dodd-Frank Wall Street Reform and Consumer Protection Act. [Online] 2010. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173enr.txt.pdf

[4] **Securities and Exchange Commission**. 17 CFR Parts 229 and 249 [Release No. 34-63547; File No. S7-40-10] RIN 3235-AK84 Conflict Minerals. [Online] 2010. http://www.sec.gov/rules/proposed/2010/34-63547.pdf

[5] **Ontario Securities Commission**. 71-101 and 71-801: The Multi Jurisdictional Disclosure System. [Online] 2010. http://www.osc.gov.on.ca/en/13190.htm

[6] **House of Commons of Canada**. Bill C-571: An Act Respecting Corporate Practices Relating to the Purchase of Minerals from the Great Lakes Region of Africa. [Online] 2010. http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&Session=23&query=7106&List=toc-1

[7] For example, the CSA has recently circulated a request for comment on amendments to executive compensation disclosure requirements, integrating the provisions from the SEC. See **Canadian Securities Administrators.** Canadian Securities Regulators Propose Amendments to Executive Compensation Disclosure Requirements. [Online] November 2010. http://www.securities-administrators.ca/aboutcsa.aspx?id=932

In particular, the SEC should avoid creating a loophole associated with the level of influence, involvement or control over the manufacturing process that triggers the requirement to disclose. This could encourage companies that are voluntarily exercising responsibility by imposing standards on suppliers to abandon these efforts, setting back supply chain management not only for conflict minerals, but also in other areas such as factory working conditions and environmental protection.

Set out clearly which activities create the requirement to report

It is evident from submissions to the SEC that there is confusion and a lack of stakeholder consensus on the definition of certain terms in Section 1502(a) that are key to understanding which companies are required to report - including *"manufacture"* and *"necessary to the functionality or production of a product"*. We suggest that the SEC should focus on explaining as clearly as possible which companies are required to report, rather than on defining particular terms in the enabling legislation. In this context, we favour interpretations of the requirement to report that focus on whether conflict minerals have been intentionally added to products or used in the production process. We also suggest that *"functionality"* should be interpreted as describing the range of features included in a product, rather than its basic function. We see value in extending the requirement to report to mining issuers, given their position at the source of the supply chain.

Disclosure should contribute to positive change in the DRC or be material to investors

The objective of the disclosure exercise is to create positive change in the DRC region, while at the same time providing investors with material information. Therefore, requirements on issuers that do not use conflict minerals from the DRC countries should be kept to a minimum. As an investment institution, we seek to understand the exposure of a company to environmental, social and governance (ESG) risk. Our interest is in aggregated data that helps us to understand the extent of an issuer's exposure to conflict minerals risk – data such as the percentage of the company's conflict minerals that are "DRC Conflict Free", or otherwise; the percentage of the company's revenues that are based on products that are not "DRC Conflict Free"; whether or not product lines that are key to future company value are "DRC Conflict Free"; and information on steps the company is taking to mitigate risk by managing the supply chain (for example, through due diligence processes and supplier codes of conduct). A large quantity of detailed product level information would not be useful for our purposes – this information is too granular for our ESG investment analysis. We recognize, however, that other stakeholders may have quite different information needs.

Protect the value of current stockpiles, and encourage use of genuine recycled and scrap minerals

Conflict minerals that are currently stockpiled or have already passed into the downstream supply chain should be designated "DRC Conflict Free" – otherwise these stocks could be devalued. This would create economic harm without any humanitarian benefit, as any abuses associated with these minerals happened in the past. Use of genuinely recycled or scrap conflict minerals should be encouraged – while taking care not to create loopholes that could stimulate "laundering" of conflict minerals from the DRC. Genuine recycled or scrap material should be considered "DRC Conflict Free", and should not generate the requirement to produce a Conflict Minerals Report.

Facilitate comparison of companies' exposure by mandating consistent disclosure practice

As investors, we prefer to see specific information items disclosed in the same format and in the same place by all relevant issuers, as this aids us in assembling comparable data. We do not have a strong preference on the location for conflict minerals disclosure, as long as it is easily accessible to investors, but recommend the SEC should specify a location rather than offering a choice. We believe clear instructions will also make it easier for issuers to work with the requirements.

Leave flexibility to integrate emerging standards and good practices in conflict minerals supply chain management

At present, work is being undertaken to define international standards for due diligence in the conflict minerals supply chain[8]. It is, therefore, important that there is flexibility for integrating new due diligence standards and guidance into the SEC requirements as progress is made in creating supply chain transparency and in the addressing drivers of conflict in the DRC region. We suggest the SEC consider including an annex to the rules to which designated sector/industry guidelines can be added as best practices emerge and standards mature.

Conclusion and main recommendations

We commend the SEC's continuing leadership in defining requirements for conflict minerals transparency, and its commitment to gathering stakeholder input on the issue. The proposed rules provide a strong basis, which we believe could be enhanced by:

- Stimulating global adoption of conflict minerals supply chain transparency by including foreign issuers, including Canadian issuers covered by MJDS.
- Closing potential loopholes for avoiding the requirement to disclose.
- Setting out clearly which types of issuer are covered, and the activities that trigger the requirement to report.
- Focusing on disclosure that will contribute to positive change in the DRC, or that is material to investors.
- Protecting the value of existing stockpiles, and encouraging the use of genuine recycled or scrap conflict minerals – but without stimulating minerals "laundering".
- Providing instructions that establish a consistent location and format for conflict minerals disclosure.
- Leaving flexibility to integrate emerging standards and good practices in conflict minerals supply chain management.

Appropriate rulemaking by the SEC in this matter will not only mitigate corporate and investor risk, but can also contribute to ending the atrocities being committed against the people of the DRC. We will continue to work with the companies held in our funds in finding ways to promote supply chain transparency and management.

Should you have any questions with regard to this submission, please do not hesitate to contact Michelle de Cordova, Manager, Public Policy & Research (mdecordova@NEIinvestments.com, 604-742-8319).

Sincerely,

NEI Investments

Robert Walker
Vice President, ESG Services

CC: Board of Directors, NEI Investments

[8] Relevant work activities are being undertaken through the OECD and the EICC/GeSI Extractives Work Group. See **Organization for Economic Cooperation and Development: Directorate for Financial and Enterprise Affairs**. OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. [Online] 2011. http://www.oecd.org/dataoecd/62/30/46740847.pdf; **Electronic Industry Citizenship Coalition.** Extractives Documents. [Online] 2011. http://www.eicc.info/extractives.htm

Annex: Detailed Responses to SEC Questions on Proposed Conflict Minerals Rules

B1. Issuers That File Reports Under the Exchange Act

1. Should our reporting standards, as proposed, apply to all conflict minerals equally?

Section 1502(a) of the Dodd-Frank Act implies that the intent of Congress in establishing the Conflict Minerals Provision is to address the humanitarian emergency created by the conflict in the Democratic Republic of Congo (DRC). Disclosure will likely drive demand for conflict-free mineral supplies, stimulating development of new conflict-free sources. However, care should be taken to ensure that responsible minerals production in the DRC and surrounding countries is not impacted negatively by the SEC rules.

In principle, we believe the SEC rules should apply to all conflict minerals. Trade in each of the minerals referenced in the Act has been linked to financing the conflict in the DRC[9], so that omitting any of them would undermine the purpose of the exercise. That said, we note that arguments have been made by various stakeholders for treating certain conflict minerals differently from others, applying phased approaches, or setting different deadlines for implementation.

The following questions may be relevant in evaluating the need for specific provisions for certain conflict minerals:

- Which conflict minerals are the highest-value contributors to the financing of the conflict in the DRC?
- Are some conflict minerals used by a much larger and more diverse group of issuers than others, or predominantly by small issuers or entities outside the regulatory scope of the SEC?
- Are supply chain management initiatives for different minerals and industries currently under development, which could be integrated to SEC rules, and what are the implementation deadlines for these initiatives?
- Do certain conflict minerals present specific supply chain complexities or economic challenges that argue for different treatment? We note that gold has been highlighted in this context.

2. Should our rules, as proposed, apply to all issuers that file reports under Sections 13(a) and 15(d) of the Exchange Act? If not, to what issuers or other persons should our rules apply? Should we require an issuer that has a class of securities exempt from Exchange Act registration pursuant to Exchange Act Rule 12g3-2(b)to provide the disclosure and reporting requirements in its home country annual report or in a report on EDGAR? Would such an approach be consistent with the Act?

The SEC should ensure that loopholes are not created that would encourage issuers in the conflict minerals supply chain to seek exemption from reporting, thus undermining the intent of Congress. The scope of "person described" in the Dodd-Frank Act is broad, and the SEC should follow this lead. We recognize, however, that there are limitations on the SEC's jurisdiction.

Therefore we agree that the rules should apply to all issuers that file reports under Sections 13(a) and 15(d) of the Exchange Act. An issuer that has a class of securities exempt from the Exchange Act registration pursuant to Exchange Act Rule 12g3-2(b) should still be required to disclose. This is consistent with the broad scope of the legislation, and it is also consistent with the intent of rule 12g3-2(b) to support U.S. investors in making better informed decisions on foreign companies. Information on a company's exposure to conflict minerals from DRC countries will help investors determine the level of risk faced by the company and the quality of its supply chain management.

3. Should we have an alternative interpretation of a "person described?"

No alternative interpretation of a "person described" is needed. We note, however, that perceived ambiguities in the enabling legislation about the definition of "person described" and the activities that trigger the requirement to report have

[9] See, for example: **United Nations Security Council.** Final report of the Group of Experts on the DRC, submitted in accordance with paragraph 6 of Security Council resolution 1896 (2009). [Online] 2010. http://www.un.org/ga/search/view_doc.asp?symbol=S/2010/596; **Business for Social Responsibility.** Conflict Minerals and the Democratic Republic of Congo. [Online] 2010. http://www.bsr.org/reports/BSR_Conflict_Minerals_and_the_DRC.pdf.

generated much discussion among stakeholders. For the sake of clarity, in its rules the SEC may wish to consider explaining in straightforward terms which types of issuer are required to report, and what activities trigger the requirement.

4. Should our rules apply to foreign private issuers, as proposed? Should we exempt such issuers and, if so, why and on what basis? Should the rules otherwise be adjusted in some fashion for foreign private issuers?

As far as possible, the rules should apply to foreign issuers that fall under SEC jurisdiction. As in the case of the Sarbanes-Oxley Act, Canadian issuers covered by the multi-jurisdictional disclosure system[10] (MJDS) should also be required to follow the conflict minerals rules. This will reduce the extent to which U.S. companies, and their investors, will be taking on a unique level of responsibility for efforts to improve conflict minerals supply chain management. It will also create impetus to address conflict minerals supply chain transparency at a global level. Foreign issuers that are already required to report under the SEC rules will likely support similar provisions in their home markets, for competitive reasons. Conversely, by not including foreign issuers, the development of conflict minerals supply chain transparency could be slowed, which would be contrary to the intent of Congress.

Similar action can be expected in other countries in response to the SEC's leadership, and as global awareness of the conflict minerals issue increases. In Canada, for example, conflict minerals legislation has already been tabled[11]; and the Canadian Securities Administrators (CSA) pay close attention to SEC rule-making developments[12]. As early adopters of conflict minerals supply chain due diligence and disclosure, U.S. issuers may gain an advantage in the long term – as may Canadian issuers that are required to report under the SEC rules.

5. Would our proposed rules present undue costs to smaller reporting companies? If so, how could we mitigate those costs? Also, if our proposed rules present undue costs to smaller reporting companies, do the benefits of making their conflict minerals information publicly available justify these costs? Should our rules provide an exemption for smaller reporting companies? Alternatively, should our rules provide more limited disclosure and reporting obligations for smaller reporting companies? If so, what should these limited requirements entail? For example, should our rules require smaller reporting companies to disclose, if true, that conflict minerals are necessary to the functionality or production of their products but not require those issuers to disclose whether those conflict minerals originated in the DRC countries or to furnish a Conflict Minerals Report? Should our rules provide for a delayed implementation date for smaller reporting companies in order to provide them additional time to prepare for the requirement and the benefit of observing how larger companies comply?

Small companies should not be exempted from the requirement to report. Considered in the light of the intent of Congress, the relative size of the reporting company is less relevant than the extent of its participation in the conflict minerals supply chain. The fact that a company is small does not mean that its exposure to conflict minerals is limited: large companies may have minimal exposure while smaller companies may be extremely dependent on conflict minerals. It would also be undesirable to create a perverse incentive to restructure a company into smaller units in order to qualify for a reporting exemption: companies have demonstrated readiness to do this in other contexts, such as tax avoidance.

Costs can be reduced through initiatives that combine the capacity of supply chain participants. If necessary, a phased approach to application of the rules could be considered to allow time for smaller companies to benefit from industry-wide initiatives, and from the example of initial reporting efforts by larger issuers. If requirements for smaller reporting

[10] **Ontario Securities Commission**. 71-101 and 71-801: The Multi Jurisdictional Disclosure System. [Online] 2010. http://www.osc.gov.on.ca/en/13190.htm

[11] **House of Commons of Canada**. Bill C-571: An Act Respecting Corporate Practices Relating to the Purchase of Minerals from the Great Lakes Region of Africa. [Online] 2010. http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&Session=23&query=7106&List=toc-1

[12] For example, the CSA has recently circulated a request for comment on amendments to executive compensation disclosure requirements, integrating the provisions from the SEC. See **Canadian Securities Administrators.** Canadian Securities Regulators Propose Amendments to Executive Compensation Disclosure Requirements. [Online] November 2010. http://www.securities-administrators.ca/aboutcsa.aspx?id=932

companies were to be delayed, this should not be for an extended length of time, and the SEC should set strict compliance deadlines. This would reduce the incentive to exploit a long-term exemption loophole, and ensure the delay does not hinder the overall development of conflict minerals supply chain solutions.

6. Should we require that all individuals and entities, regardless of whether they are reporting issuers, private companies, or individuals who manufacture products for which conflict minerals are necessary to the functionality or production of the products, provide the conflict minerals disclosure and, if necessary, a Conflict Minerals Report? If so, how would we oversee such a broad reporting system?

This is beyond the scope of our perspective as an investor in U.S. public companies.

7. Would requiring compliance with our proposed rules only by issuers filing reports under the Exchange Act unfairly burden those issuers and place them at a significant competitive disadvantage compared to companies that do not file reports with us? If so, how can we lessen that impact?

The competitive disadvantage is lessened by the fact many companies – including non U.S. companies - have already voluntarily started to work on disclosure and management of their conflict minerals supply chain. The operational and reputational risks of failing to address supply chain issues may ultimately outweigh the cost of compliance. Companies that are required to report, and hence acquire a better understanding of supply chain risk, are likely to gain a competitive advantage over companies that lack this awareness. Issuers that are required to disclose will demand conflict minerals supply chain information from suppliers, whether or not those suppliers are themselves required to disclose – effectively extending the compliance requirement beyond issuers.

8. General Instruction I to Form 10-K contains special provisions for the omission of certain information by wholly-owned subsidiaries. General Instruction J to Form 10K contains special provisions for the omission of certain information by asset-backed issuers. Should either or both of these types of registrants be permitted to omit the proposed conflict minerals disclosure in the annual reports on Form 10-K?

We suggest that neither type of registrant should be exempted from conflict minerals disclosure, as this would go against the apparent intent of Congress. The SEC should avoid creating a perverse incentive to restructure a company in order to qualify for exemption from the requirement to report. Companies have demonstrated readiness to do this in other contexts, such as tax avoidance. The SEC should also take into consideration fairness to other issuers.

B2. "Manufacture" and "Contract to Manufacture" Products

9. Should we define the term "manufacture?" If so, how should we define the term?

Investors rely on disclosure being comparable. Given the wide range of definitions of the word "manufacture" already proposed by stakeholders, the term is clearly more ambiguous than the SEC suggests. From an investment perspective, we see a risk that companies we would wish to compare against each other may interpret "manufacture" differently. Removing ambiguity is desirable – whether by defining "manufacture", or stating clearly which activities trigger the requirement to report.

The SEC should consider how to apply the rules to issuers with business structures such as minority ownership of manufacturing entities. Otherwise a perverse incentive could be created to restructure to avoid disclosure requirements.

10. Should our rules, as proposed, apply both to issuers that manufacture and issuers that contract to manufacture products in which conflict minerals are necessary to the functionality or production of those products?

The rules should apply to both issuers that manufacture and issuers that contract to manufacture. The SEC makes a strong case that this was the intent of the enabling legislation, and both types of issuer clearly derive material benefit from the use of conflict minerals. From a perspective of U.S. competitiveness, the SEC will wish to ensure that it does not create a

perverse incentive for U.S. issuers to contract to manufacture with companies outside the U.S., rather than manufacturing themselves in the U.S. Applying the disclosure requirement to issuers that contract to manufacture will also contribute to improvements in conflict minerals supply chain management globally, as U.S. issuers that are required to report will likely place information requirements on suppliers.

11. Should we require a minimum level of influence, involvement, or control over the manufacturing process before an issuer must comply with our proposed rules? If so, how should we articulate the minimum amount? Should we require issuers to have nominal, minimal, substantial, total, or another level of control over the manufacturing process before those issuers become subject to our rules? How would those amounts be measured? Should we require that issuers must, at minimum, mandate that the product be manufactured according to particular specifications?

A potential loophole for avoiding disclosure may be created if a minimum level of influence, involvement or control over the manufacturing process is required to trigger the requirement to disclose. The SEC should not create a perverse incentive for companies that are voluntarily exercising supply chain responsibility by imposing standards on suppliers to abandon these efforts, to avoid triggering the requirement to disclose under the conflict minerals provisions. This could set back supply chain management not only for conflict minerals, but also in other areas such as factory working conditions and environmental protection.

12. Is it appropriate to consider issuers who sell generic products under their own labels or labels that they establish to be contracting the manufacture of those products as long as those issuers have contracted with other parties to have the products manufactured specifically for them? If not, what would be a more appropriate approach?

It seems appropriate to consider issuers who sell generic products under their own label as contracting to manufacture. The SEC should take care to ensure that the rules do not create a perverse incentive for issuers to avoid the disclosure requirements by reducing their influence over manufacturing standards and conditions. There should also be a level playing field for U.S. issuers who manufacture products under their own brand, and U.S. issuers who manufacture generic products for sale by others.

B3. Mining Issuers as "Manufacturing" Issuers

13. Is it appropriate for our rules, as proposed, to consider reporting issuers that are mining companies as "persons described" under Section 1502? Does the extraction of conflict minerals from a mine constitute "manufacturing" or "contracting to manufacture" a "product" such that mining issuers should be subject to our rules?

Given the apparent intent of Congress, this may be desirable. The consultation document highlights the parallel with the Controlled Substances Act, which extends the definition of manufacture upstream in the supply chain to extraction, in order to control the illegal narcotics trade.

Participation of mining issuers will increase the transparency of the entire conflict minerals supply chain, and support the reporting of issuers further downstream in the supply chain. The extent of the additional burden for mining companies may be lessened by the fact that they are naturally aware of the precise details and locations of their operations: in fact, most North American mining issuers already report this information in their annual filings. It is also reasonable to assume that where mining issuers are producing "DRC Conflict Free" minerals, disclosure of this information will tend increase the marketability of their product.

The SEC should take into consideration the fact that issuers may be involved in diverse operations that include mining, or may derive benefit from mining operations through various business structures (such as royalties). For clarity and to avoid creation of exploitable loopholes, rather than referring to mining issuers we would suggest that the SEC describe the mining and processing activities and ownership structures that trigger the reporting requirement. The rules could cover all

companies that extract, sort, crush, or process conflict minerals, or derive material benefit from these activities through other business structures.

14. Alternatively, should a mining issuer not be viewed as manufacturing a product under our rules unless it engages in additional processes to refine and concentrate the extracted minerals into saleable commodities or otherwise changes the basic composition of the extracted minerals?

See response under question 13.

15. If so, what transformative processes, if any, should mining issuers be permitted to perform on conflict minerals before our proposed rules should consider them to be manufacturing products to which conflict minerals are necessary?

See response under question 13.

B4. When Conflict Minerals Are "Necessary" to a Product

16. Should our rules define the phrase "necessary to the functionality or production of a product," or is that phrase sufficiently clear without a definition? If our rules should define the phrase, how should it be defined?

Stakeholders have already proposed a range of definitions of "necessary to the functionality or production of a product", suggesting that it is not sufficiently clear. From an investment perspective, we see a risk that companies we would wish to compare against each other may interpret the phrase differently. Removing ambiguity about which issuers are covered by the rules is desirable. Whether or not the phrase is actually defined, the SEC should explain clearly which types of conflict mineral use trigger the requirement to report.

In order to fulfill the humanitarian aim of the enabling legislation, reporting should be triggered by all products that contain conflict minerals, or for which conflict minerals form part of the production process. "Necessary to the functionality" should not be interpreted so as to cover only products that absolutely require conflict minerals in order to operate; nor so as to allow for the argument that conflict minerals are extra parts that enhance a product, rather than making it work. For example, a manufacturer might place a transmitter in a box coated with gold to prevent corrosion and enhance the operating lifespan. Although the transmitter would still operate without the gold coating, it is still an important attribute for the quality of the transmitter. Because the gold is added intentionally to the product, it should trigger the requirement to report.

17. If we were to define this phrase, should we delineate it to mean that a conflict mineral would be necessary to a product's functionality only if the conflict mineral is necessary to the product's basic function? If so, should we define the term "basic function" and, if so, how should we define that term? Should we define the term to include components of a product if those components are necessary to the product's basic function such that a conflict mineral would be considered necessary to the functionality of a product if the conflict mineral is necessary to the functionality of any of the product's components that are required for that product's basic function? For example, if the only conflict minerals in an automobile are contained in the automobile's radio, should our proposed rules consider those conflict minerals necessary to the automobile's functionality even if the automobile's basic function is for transportation? If that radio is marketed and sold with the automobile, should our proposed rules consider the conflict minerals that are isolated in the radio necessary to the functionality of the automobile? Alternatively, should such a definition consider only conflict minerals isolated in an automobile component required specifically for the automobile's basic function as necessary for the functionality of the automobile?

The SEC should not restrict application of the rules only to situations where conflict minerals are associated with a product's basic function. This was clearly not the intent of Congress, it would unfairly burden certain users of conflict minerals, and it would undermine the value of the entire exercise in terms of improving conflict minerals supply chain management. It is

worth noting in this context that, particularly when applied to technology, the word "functionality" is often used to describe the sum of what a product can do, or the totality of its features, rather than its basic function.

In the example of the automobile radio, the use of conflict minerals in the radio should trigger the requirement to report, because the conflict minerals were intentionally included in a feature of the overall automobile product. The radio enhances the car's "functionality", and provides utility to the manufacturer by rendering the automobile more marketable.

18. If we were to define the phrase "necessary to the functionality," should we delineate it to mean that a conflict mineral would be necessary to a product's functionality if the conflict mineral is included in a product for any reason because that conflict mineral would be contributing to the product's economic utility? Does the fact that, if a conflict mineral is not "necessary" it, axiomatically, could be excluded from the product or the manufacturing process support such a broad reading?

Give the apparent intent of Congress and the clarification provided by congressional sponsors, integrating the economic utility concept may be relevant. But it might also be argued that if conflict minerals have been included in a product, an assumption can be made that this was deemed "necessary" - whether to make the product perform its basic functions, to make it economically viable, or to make it more marketable by enhancing its functionality. If a manufacturer can exclude conflict minerals from a product hypothetically, then it should be required to actually remove the conflict minerals to avoid triggering the requirement to report.

19. Should we define the phrase to indicate that, as one letter suggested, a conflict mineral should be considered necessary when "[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 but does not appear in 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?"

This is a helpful interpretation that supports the apparent intent of Congress, and clarifies possible areas of ambiguity, by focusing on the intentional use of conflict minerals (for whatever reason). As noted earlier, rather than defining phrases from the legislation, we suggest that the focus should be upon explaining as clearly as possible which actions trigger the requirement to report.

20. Should we delineate the phrase "necessary to the production" to mean that a conflict mineral would be necessary to a product's production only if the conflict mineral is intentionally included in a product's production process even if that conflict mineral is not ultimately included in the final product because it was removed or washed away prior to the completion of the production process? Should we consider conflict minerals necessary to the production of a product if they are not contained in the product but they are necessary to the functionality or production of a physical tool or machine used to produce a product? Should we consider such conflict minerals necessary to the production of a product if the tool or machine used to produce the product was manufactured for the purpose of producing the product? Is this the same situation as someone who contracts for manufacture of a product? Would such an approach cover too broad a group of tools or machines? Should we limit such an approach to certain kinds of tools or machines, and if so, which ones? Should we be more specific and provide, as a letter recommended, that a conflict mineral is necessary to a product's production only if it is "used by [an 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 but does not appear in the final product?"

Extending the scope of the requirement to report to cover tools and machinery used in the production process is unlikely to be practicable. This would encompass a greatly-increased number of companies, and it is difficult to see how companies could obtain the necessary information for tools and machinery that were acquired in the past.

21. Should we delineate the phrase "necessary to the production" so that our rules would not consider conflict minerals occurring naturally in a product or conflict minerals that are purely an unintentional byproduct of the product as necessary to the production of that product?

The SEC may wish to consider extending the rules to cover conflict minerals that are a by-product where these are sold, traded, or disposed to another party. This could have application for mining companies.

C1. Location Disclosure

22. Should we require issuers to provide the conflict minerals disclosure and reporting requirements mandated under Section 13(p) in its Exchange Act annual report, as proposed? Should we require, or permit, the conflict minerals disclosure to be included in a new, separate form furnished annually on EDGAR, rather than adding it to Form 10-K, Form 20-F, and Form 40-F? Would requiring issuers to disclose the information in a separate annual report be consistent with Section 13(p)? Should we develop a separate annual report to be filed on EDGAR that includes all of the specialized disclosures mandated by the Dodd-Frank Act? What would be the benefits or burdens of such a form for investors or issuers with necessary conflict minerals?

As investors, we prefer to see specific information items disclosed in a similar format and in a similar location by all relevant companies, as this aids us in assembling comparable data. We do not have a strong recommendation about the location for conflict minerals disclosure, as long as it is easily accessible to investors. The SEC should specify a location, rather than offering a choice of locations. We believe clear instructions will also make it easier for issuers to work with the requirements. With regard to Canadian companies that report under the MJDS, we would find it useful if the brief disclosure referenced in our responses to questions 23, 24 and 25 were included in Form 40-F, along with directions to the full Conflict Minerals Report, where applicable. From the perspective of investor convenience, we see some merit in the suggestion that detailed reporting on all the specialized disclosures required under the Dodd-Frank Act might presented in one report document, as some companies may be required to provide disclosure under all of these sections, but we do not have a strong recommendation on this point.

23. Should we require some brief disclosure in the body of the annual report, as proposed?

Yes: the basic disclosure proposed will be helpful to investors seeking information.

24. Should our rules provide that, rather than be included in the body of the annual report, all required information would be set forth in the Conflict Minerals Report that would be furnished as an exhibit to the annual report?

As investors, we would find it most useful to have brief disclosure in the body of the annual report, with the full Conflict Minerals Report (if triggered) either furnished as an exhibit or filed separately.

25. Instead, should all required information, including the Conflict Minerals Report, be included in the body of the annual report?

No: the annual report could become too lengthy if it included all the information required in the Conflict Minerals Report.

26. Should issuers with necessary conflict minerals that did not originate in the DRC countries be required to disclose any information other than as proposed? For example, should we require such an issuer to disclose the countries from which its conflict minerals originated?

Issuers whose conflict minerals did not originate in DRC countries should not be required to disclose more information than proposed at this time. The focus of the legislation is on conflict minerals from the DRC countries, and we see no reason to require issuers to provide sourcing details for minerals that originate in other countries.

27. Should we, as proposed, require issuers to describe the reasonable country of origin inquiry they used in making their determination that their conflict minerals did not originate in the DRC countries? Is a separately captioned section in the body of the annual report the appropriate place for this disclosure?

We agree that issuers should be asked to describe the reasonable country of origin inquiry (RCOI) used to determine that conflict minerals did not originate in DRC countries. This will help ensure credibility of issuer disclosure. The location of this disclosure should be consistent among different issuers, so that investors can find it easily. Our understanding of the present proposal is that only issuers whose conflict minerals did not originate in DRC countries will be required to describe the RCOI. We would prefer to see all companies providing a description of their RCOI process. This will be helpful for the purpose of corporate engagement with companies that are unable to determine the origin of their conflict minerals, giving us insight into possible problems in the quality of their supply chain management processes.

28. Should we require, as proposed, that an issuer maintain reviewable business records if it determines that its conflict minerals did not originate in the DRC countries? Are there other means of verifying an issuer's determination that its minerals did not originate in the DRC countries? Should we specify for how long issuers would be required to maintain these records? For example, should we require issuers to maintain records for one year, five years, 10 years, or another period of time?

Yes: an issuer should be required to maintain reviewable business records if it determines and discloses that its conflict minerals did not originate in the DRC countries, to allow for any future verification action by the SEC. We are not aware of other means of verifying such a determination at this time. The recently-published OECD Due Diligence Guidance[13] proposes that supply chain records be maintained for five years.

29. Should we require the disclosure in an issuer's annual report to be provided in an interactive data format? Why or why not? Would investors find interactive data to be a useful tool to easily find the information provided? If so, what format would be most appropriate for providing standardized data disclosure? For example, should the format be eXtensible Business Reporting Language (XBRL), as one letter recommended, or should the format be eXtensible Markup Language (XML)?

No comment.

30. Should we require issuers to briefly disclose in the body of their annual reports the contents of the Conflict Minerals Report? If so, how much of the information in the Conflict Minerals Report should we require issuers to disclose?

As noted in answer to question 23, for our purposes the brief disclosure proposed by the SEC would be adequate – with the proviso that we would prefer to see all companies provide a description of their reasonable country of origin inquiry, as noted in response to question 27.

31. Should we require an issuer to post its audit report on its Internet website, as proposed?

Yes: posting the audit report will add to the transparency and credibility of reporting.

32. Should we require, as proposed, that an issuer post its Conflict Minerals Report and its audit report on its Internet website at least until it files its subsequent annual report? If not, how long should an issuer keep this information posted on its Internet website?

[13] **Organization for Economic Cooperation and Development: Directorate for Financial and Enterprise Affairs**. OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. [Online] 2011. http://www.oecd.org/dataoecd/62/30/46740847.pdf

Publishing information on the company website increases accessibility for stakeholders and the public. We would prefer issuers to post several years worth of reports on their websites, to allow investors to perform year-on-year comparisons and trend analysis.

C2. Standard for Disclosure

33. Is a reasonable country of origin inquiry standard an appropriate standard for determining whether an issuer's conflict minerals originated in the DRC countries for purposes of our rules implementing the Conflict Minerals Provision? If not, what other standard would be appropriate? Rather than requiring a reasonable country of origin inquiry as proposed, should our rules mandate that the standard for making the supply chain determinations, as set forth in Exchange Act Sections 13(p)(1)(A)(i) and (ii) (and described below), also applies to the determination as to whether an issuer's conflict minerals originated in the DRC countries? Should we provide additional guidance about what would constitute a reasonable country of origin inquiry in determining whether conflict minerals originated in the DRC countries?

A reasonable country of origin inquiry standard is appropriate for the purpose of the rules. The SEC should allow some flexibility, at least at the early stages, regarding acceptable standards for reasonable country of origin inquiry: guidance can be revisited as good practice emerges, and as industry initiatives are developed.

34. Should we not require any type of inquiry? For example, would it be appropriate and consistent with the Conflict Minerals Provision to permit an issuer to make no inquiry, so long as it disclosed that fact?

No: allowing an issuer to make no inquiry seems contrary to the intent of Congress. All companies covered by the rules should be required to make an inquiry regarding their conflict minerals. If there is no requirement to undertake an inquiry, it will be more difficult for companies to justify making the effort, which could undermine the entire exercise.

35. Should issuers be able to rely on reasonably reliable representations from their processing facilities, either directly or indirectly through their suppliers, to satisfy the reasonable country of origin inquiry standard? If so, should we provide additional guidance regarding what would constitute reasonably reliable representations and what type of guidance should we provide? If not, what would be a more appropriate requirement?

Yes: issuers should be able to rely on reasonably reliable representations, in the form of public or written assurances or certifications, from their processing facilities or suppliers to satisfy the reasonable country of origin inquiry standard. It will not be practicable or useful for every downstream issuer to conduct its own potentially duplicative investigation of every step in the supply chain, particularly upstream of the minerals smelter or refiner. It should be recognized that expectations on what constitute reasonably reliable representations will likely evolve over time with improving knowledge and experience of conflict minerals supply chain management.

36. Should any qualifying or explanatory language be allowed in addition to or instead of the reasonable country of origin inquiry standard, as proposed, regarding whether issuers' conflict minerals originated in the DRC countries? For example, should issuers be able to state that none of their conflict minerals originated in the DRC countries "to the best of their knowledge" or that "they are not aware" that any conflict minerals originated in the DRC countries?

This kind of qualifying language should not be permitted instead of the reasonable country of origin inquiry standard. Disclosure of this type is of little value to investors, as it gives no insight to the issuer's real exposure to DRC conflict minerals, nor to what the issuer has actually done to evaluate its supply chain. Offering this option could discourage companies from making the necessary effort to research their supply chain exposure adequately, undermining the entire exercise.

D1. Content of Conflict Minerals Report

37. Should our rules, as proposed, require issuers that are unable to determine the origin of their conflict minerals to label their products that contain such minerals as not "DRC conflict free"? Is this approach consistent with the "Conflict Minerals Provision"? Would it be more appropriate to allow such issuers to label such products differently, such as "May Not Be DRC Conflict Free"? Would having a separate category for products that contain such unknown origin minerals be consistent with the Conflict Minerals Provision? Would the proposed approach be confusing for readers, or can issuers sufficiently address any confusion by including supplemental disclosure for those products that contain minerals of unknown origin?

Several stakeholders have noted that use of the word "label" in the context of the SEC rules may cause confusion, as it could be interpreted as a requirement to apply a physical label to products indicating their DRC conflict status, rather than to provide reporting on conflict minerals use.

Ultimately, companies that are unable to determine the origin of the conflict minerals in a product should be required to identify the product as "Not DRC Conflict Free". Allowing issuers to designate products using an intermediate category such as "May Not Be DRC Conflict Free" could create a perverse incentive for companies to avoid undertaking an adequate investigation of the supply chain that might confirm that minerals are "Not DRC Conflict Free" - undermining the purpose of the exercise.

However, in the early stages of the reporting regime, it is likely that even with best efforts many issuers will be unable to determine the origin and conflict status of some of their minerals - because their own supply chain monitoring systems are still under development, and because the mechanisms to certify minerals smelters and allow minerals tracing in the field in DRC countries are still being put in place. It may, therefore, be appropriate to allow use of an "undetermined" designation, at least during a phase-in period.

38. Should our rules, as proposed, permit issuers to describe their products that contain conflict minerals that do not qualify as being DRC conflict free or that may not qualify as being DRC conflict free based on their individual facts and circumstances? If not, how should we require issuers to describe their products that contain conflict minerals that do not qualify as being DRC conflict free? If an issuer had hundreds or thousands of products that were not DRC conflict free, would the report provide overwhelming information? Would it be unduly expensive to produce?

As an investment institution, we seek to understand the exposure of a company to environmental, social and governance (ESG) risk. Our interest, therefore, is in aggregated data that helps us to understand the extent of an issuer's exposure to conflict minerals risk – data such as the percentage of the company's conflict minerals that are "DRC Conflict Free", or otherwise; the percentage of the company's revenues that are based on products that are not "DRC Conflict Free"; whether or not product lines that are key to future company value are "DRC Conflict Free"; and information on steps the company is taking to mitigate risk by managing the supply chain (for example, through due diligence processes and supplier codes of conduct). A large quantity of detailed product level information would not be useful for our purposes – this information is too granular for our ESG investment analysis. We recognize, however, that other stakeholders may have quite different information needs.

39. Should our rules, as proposed, require issuers to disclose the facilities, countries of origin, and efforts to find the mine or location of origin only for its conflict minerals that do not qualify as DRC conflict free, and not for all of its conflict minerals? Alternatively, should we require issuers to disclose the facilities, countries of origin, and efforts to find the mine or location of origin for all of its conflict minerals regardless of whether those conflict minerals do not qualify as DRC conflict free?

Issuers should not have to provide this information for conflict minerals from non-DRC countries (and indeed should not be required to provide a Conflict Minerals Report). We believe issuers claiming conflict minerals from DRC countries to be "DRC

Conflict Free" should be asked to provide detail to justify this claim. Requiring this kind of disclosure will guard against misleading statements and encourage companies to undertake adequate research into their supply chain. Issuers who claim that their conflict minerals from DRC countries are "DRC Conflict Free" will, presumably, have access to information about the origin of the minerals, because otherwise they would have no basis for making the claim. Where companies are able to provide concrete justification of "DRC Conflict Free" status for conflict minerals from DRC countries, there will be an added benefit of demonstrating to peer companies what is achievable in terms of supply chain management.

40. Should our rules require issuers to disclose the mine or location of origin of their conflict minerals with the greatest possible specificity in addition to requiring issuers, as proposed, to describe the efforts to determine the mine or location of origin with the greatest possible specificity? If so, how should we prescribe how the location is described?

Yes: the rules should require issuers sourcing conflict minerals from the DRC countries to also disclose the mine or location of origin of their conflict minerals with the greatest possible specificity in addition to describing the efforts to determine the origin. A list of DRC countries with points placed on a detailed map could be one way to disclose locations, with the State Department's Conflict Minerals Map prescribed as the basis for this disclosure.

41. As suggested in a submission, should our rules require issuers to include information on the capacity of each mine they source from along with the weights and dates of individual mineral shipments?

The rules should not require issuers to include information on the capacity of each mine they source from along with the weights and dates of individual mineral shipments. We do not consider this information to be of material interest to investors, and it may be competitively sensitive for issuers. Most seriously, it could create an operational security risk for mines and processors, by allowing criminals to deduce information about mineral shipment patterns.

42. We are proposing that an issuer "certify the audit" by certifying that it obtained such an audit. Should we further specify the nature of the certification? We are not proposing that anyone sign this certification. Should our rules require issuers to have the audit's certification signed? If so, who should be required to sign the certification? Also, if we revise our proposal to require an individual to sign, should the individual who signs the certification sign it in his or her capacity within the company or on behalf of the company? What liability should our rules assign to the individual who signs the certification?

There should be no requirement for anyone to sign the certification, at least until good practices for determining the source of conflict minerals are better established, along with good practice in auditing this process.

43. Should our rules, as proposed, require an issuer to furnish its independent private sector audit report as part of its Conflict Minerals Report? Are there other ways to give effect to the Conflict Minerals Provision's requirement of Section 13(p)(1)(B) that the issuer "certify the audit…that is included in" [emphasis added] the Conflict Minerals Report? Would investors find the audit report useful? How would the potential liability for a furnished audit report affect the cost and availability of such audit services?

In the supply chain management and corporate reporting contexts, the word "audit" in used in a variety of applications, so the SEC should define clearly what is to be audited.

Requiring an issuer to make available its independent private sector audit report would give the Conflict Minerals Report added credibility, providing some indication that the Conflict Minerals Report has been prepared to a standard comparable with that of other issuers.

44. Should our rules provide that, as proposed, the independent private sector audit report furnished as an exhibit to an issuer's annual report not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the issuer specifically incorporates it by reference? Is this audit report qualitatively different from other expert's reports for which consent is required under our rules?

No comment.

45. Are there other ways we should treat the audit report under our rules to balance the interests of receiving a high quality audit and not unnecessarily increasing potential liability and costs?

No comment.

D2. Location and Furnishing of Conflict Minerals Report

46. Should we, as proposed, require the Conflict Minerals Report to be furnished as an exhibit to the issuer's annual report? If not, how should it be provided?

From the perspective of conducting ESG analysis, what is most important is that it should be easy to ascertain whether or not an issuer is providing a Conflict Minerals Report, and that the location of the report should be consistent.

47. Should we require the Conflict Minerals Report to be filed as an exhibit, rather than furnished, which would affect issuers' liability under the Exchange Act or under the Securities Act (if any such issuer incorporates by reference its annual report into a Securities Act registration statement)?

No comment.

48. Under Exchange Act Section 18, "Any person who shall make or cause to be made any statement in any application, report, or document filed pursuant to [the Exchange Act] or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 15, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, shall be liable to any person (not knowing that such statement was false or misleading) who, in reliance upon such statement, shall have purchased or sold a security at a price which was affected by such statement, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading." Is it appropriate not to have the Conflict Minerals Report subject to the Section 18 liability even if the elements of Section 18 liability can be established? Should we require the Conflict Minerals Report to be filed for purposes of Exchange Act Section 18, but permit an issuer to elect not to incorporate it into Securities Act filings?

No comment.

49. Should the Conflict Minerals Report be furnished annually on Form 8-K.134 Would that approach be consistent with Exchange Act Section 13(p)(1)(A)? If so, should foreign private issuers, which do not file Forms 8-K, be permitted to submit the Conflict Minerals Report either in their Form 20-F or 40-F as applicable, or annually on Form 6-K, at their election?

No comment.

D3. Due Diligence Standard in the Conflict Minerals Report

50. Should our rules, as proposed, require an issuer to use due diligence in its supply chain determinations and the other information required in a Conflict Minerals Report? If so, should those rules prescribe the type of due diligence required and, if so, what due diligence measures should our rules prescribe? Alternatively, should we require only that persons describe whatever due diligence they used, if any, in making their supply chain determinations and their other conclusions in their Conflict Minerals Report?

We agree that issuers should be required to use due diligence, as proposed. This would be consistent with the recently-approved OECD Due Diligence Guidance. Companies should be required to describe the due diligence procedure used, but

given that standards of due diligence procedure for the conflict minerals supply chain are still being refined, at this stage it may be more helpful to direct companies to sources of due diligence guidance, rather than making a formal prescription.

51. Should different due diligence measures be prescribed for gold because of any unique characteristics of the gold supply chain? If so, what should those measures entail?

We note that an OECD Due Diligence Guidance supplement for gold is under preparation.

52. Should our rules state that an issuer is permitted to rely on the reasonable representations of its smelters or any other actor in the supply chain, provided there is a reasonable basis to believe the representations of the smelters or other parties?

Yes: as noted in the response to question 35, issuers should be able to rely on reasonable representations, such as written assurances or evidence of certification, from upstream supply chain actors. We see no benefit in every downstream issuer conducting a potentially duplicative direct investigation of every step in the supply chain, and indeed this is unlikely to be practicable.

53. Is our approach to issuers that are unable to determine that their products did not originate in the DRC countries appropriate?

Yes: if an issuer cannot show that its conflict minerals are sourced from non-DRC countries, it should be required to submit a Conflict Minerals Report. The SEC should not create a perverse incentive for companies to avoid undertaking adequate investigation of the supply chain that might confirm that minerals are "Not DRC Conflict Free" - undermining the purpose of the exercise.

54. Should our rules prescribe any particular due diligence standards or guidance?

Not at this time. As noted in our earlier submission, a number of initiatives are underway to establish new standards and best practices for minerals supply chain transparency and management. We therefore encourage the SEC to maintain the flexibility to adapt the disclosure requirements as more is understood about possible solutions, and supply chain management for these minerals develops and improves.

55. Should our rules require that an issuer use specific national or international due diligence standards or guidance, such as standards developed by the OECD, the United Nations Group of Experts for the DRC, or another such organization? If so, should our rules require the issuer to disclose which due diligence standard or guidance it used? Should we list acceptable national or international organizations that have developed due diligence standards or guidance on which an issuer may rely? Should our rules permit issuers to rely on standards from federal agencies if any such agencies develop applicable rules?

We suggest that issuers should be asked to follow established guidelines and good practices that are relevant for their industry, the conflict minerals to which they are exposed and their position in the supply chain, and to disclose use of such standards. The SEC may wish to consider adding an annex to the rules with a list of standards and guidance, updating this annex as best practices emerge and industry standards mature. This list should include the recently approved OECD Due Diligence Guidance[14].

E1. Furnishing of the Initial Disclosure and Conflict Minerals Report

56. Should our rules, as proposed, require that a complete fiscal year begin and end before issuers are required to provide their initial disclosure or Conflict Minerals Report regarding their conflict minerals?

[14] **Organization for Economic Cooperation and Development: Directorate for Financial and Enterprise Affairs**. OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. [Online] 2011. http://www.oecd.org/dataoecd/62/30/46740847.pdf

Yes: furthermore it is possible that a significant number of companies will still not have developed the systems needed to determine the origin of their conflict minerals by this deadline. If a very large number of issuers report that they are unable to determine the origin of their conflict minerals, the value of the exercise for assessing conflict minerals risk may be undermined, at least from an investor perspective.

57. If we require issuers to provide their disclosure or reporting requirements in their Exchange Act annual reports, should we permit them to file an amendment to the annual report within a specified period of time subsequent to the due date of the annual report, similar to Article 12 schedules or financial statements provided in accordance with Regulation S-X Rule 3-09, to provide the conflict minerals information? If so, why and for which issuers should our rules permit such a delay? For example, should we allow this delay only for smaller reporting companies?

No comment.

58. Should we phase in our rules and permit certain issuers, such as smaller reporting companies, to delay compliance with the Conflict Minerals Provision's disclosure and reporting obligations until a period after that which is provided in the Exchange Act Section 13(p)(1)(A)?

Allowing smaller reporting companies to delay compliance may be appropriate. As noted in response to question 5, a phased approach to application of the rules could be considered to allow smaller companies to take advantage of industry-wide initiatives and benefit from the example of initial reporting efforts by larger issuers. If application of the rules to smaller reporting companies is delayed, this should not be for an extended length of time, and the SEC should be strict with compliance deadlines. This will reduce the incentive to exploit a long-term exemption loophole for smaller issuers, and ensure the delay does not hinder the overall development of conflict minerals supply chain solutions.

E2. Time Period in which Conflict Minerals Must be Disclosed or Reported

59. Is "possession" the proper determining factor as to when issuers should provide the required disclosure or a Conflict Minerals Report regarding a necessary conflict mineral? If not, what would be a more appropriate test and why?

No comment.

60. Should our rules allow individual issuers to establish their own criteria for determining which reporting period to include any required conflict minerals disclosure or Conflict Minerals Report, provided that the issuers are consistent and clear with their criteria from year-to-year?

From an investor perspective this may be acceptable. However, it may render the information less useful for analysis of conflict minerals trends by other stakeholders.

61. We note it is possible issuers may have stockpiles of existing conflict minerals that they previously obtained. Do we adequately address issuers' disclosure and reporting obligations regarding their existing stockpiles of conflict minerals? If not, how can we address existing stockpiles of conflict minerals? Should our rules permit a transition period so that issuers would not have to provide any conflict minerals disclosure or report regarding any conflict mineral extracted before the date on which our rules are adopted? Alternatively, would the reasonable country of origin inquiry standard for determining the origin of the conflict minerals and the due diligence standard or guidance for determining the source and chain of custody of the conflict minerals that originated in the DRC countries accomplish the same goal? For example, should issuers be required to inquire about the origin of their conflict minerals extracted before the date on which our rules are adopted? As another example, should issuers file a Conflict Minerals Report regarding conflict minerals that originated in the DRC countries before the date on which our rules are adopted?

A transition period should be applied. Issuers should not have to report on the origin of conflict minerals that were stockpiled or passing through the supply chain before the SEC rules came into force, as it will be difficult or impossible to determine the origin of the minerals retrospectively. If no transition period is applied, stockpiled material could be devalued, causing economic harm while creating no benefit for the humanitarian situation - any abuses associated with these stockpiled minerals having occurred in the past.

Furthermore, consignments of minerals that were "DRC Conflict Free" when they entered the supply chain should retain that status, even if the mine of origin subsequently becomes a conflict mine.

F1. Materiality Threshold

62. Should there be a de minimis threshold in our rules based on the amount of conflict minerals used by issuers in a particular product or in their overall enterprise? If so, what would be a proper threshold amount? Would this be consistent with the Conflict Minerals Provision?

We would recommend against setting a de minimis threshold for intentional use of conflict minerals. The SEC should take care not to create a perverse incentive to restructure a company into smaller units in order to qualify for a reporting exemption: as noted earlier, companies have demonstrated readiness to do this in other contexts such as tax avoidance.

F2. Recycled and Scrap Minerals

63. Should our rules, as proposed, include an alternative approach for conflict minerals from recycled or scrap sources as proposed? If so, should that approach permit issuers with necessary conflict minerals to classify those minerals as DRC conflict free, as proposed? Should we require, as proposed, issuers using conflict minerals from recycled or scrap sources to furnish a Conflict Minerals Report, including a certified independent private sector audit, disclosing that their conflict minerals are from these sources? If not, why not?

Companies using recycled or scrap material should be permitted to classify these minerals as "DRC Conflict Free", but they should not have to provide a Conflict Minerals Report. The SEC should avoid creating reporting requirements that could discourage the use of genuine scrap/recycled material, or devalue that material[15]. Furthermore, it seems doubtful that it would be possible to determine the source origin of recycled conflict minerals, so the Conflict Minerals Report would not be useful.

64. Instead, should our rules require issuers with recycled or scrapped conflict minerals to undertake reasonable inquiry to determine they are recycled or scrapped and to disclose the basis for their belief that their minerals are, in fact, from these sources?

Yes: issuers should be required to disclose how they have determined that sources are genuine scrap/recycled. Scrap/recycling companies might otherwise be encouraged to "launder" new DRC conflict minerals through their operations – misleading consumers and other stakeholders, and undermining the value of the disclosure exercise. Clearly defining the terms "scrap" and "recycled" may help in closing this potential loophole.

65. Should our rules, as proposed, require that issuers use due diligence in determining whether their conflict minerals are from recycled or scrap sources as proposed and file a Conflict Minerals Report including an independent private sector audit of that report? If so, should our rules prescribe the due diligence required? If our rules should not require due diligence, should our rules require any alternative standard or guidance? If so, what standard or

[15] This issue has been raised in submissions from a number of other stakeholders: Materials Management Corporation (January 13, 2011); International Precious Metals Institute (January 19, 2011); Malaysia Smelting Corporation (January 26, 2011); Tantalum-Niobium International Study Center (January 27, 2011); ITRI Ltd (January 27, 2011); and AngloGold Ashanti Limited (January 31, 2011). See **U.S. Securities and Exchange Commission.** Proposed Rule: Conflict Minerals – Submitted Comments. [Online] 2011. http://www.sec.gov/comments/s7-40-10/s74010.shtml

guidance? Should our rules define what constitutes recycled or scrap conflict minerals? If so, what would be an appropriate definition?

Issuers should use due diligence in determining whether conflict minerals are from scrap/recycled sources. A definition of what constitutes genuine recycled and scrap minerals should be provided: we note that the OECD Due Diligence Guidance includes such a definition. As noted in response to question 63, a Conflict Minerals Report is not necessary.

66. Should this treatment be limited to gold, or should it apply to all conflict minerals, as proposed?

Although recycling and scrap provisions are most relevant for gold at present, they should apply to all conflict minerals. Other stakeholders have pointed to significant presence of recycled material in the tin market[16].

67. Is our alternative approach to recycled and scrap minerals appropriate? Is there a significant risk that conflict minerals that are not "DRC conflict free" may be inappropriately processed and "recycled" so as to take advantage of this alternate approach?

As noted in earlier responses, we believe the risk that conflict minerals may be "laundered" is significant[17].

68. Should we allow exemptions to the information required by smaller reporting companies regarding their use of recycled or scrap minerals? For example, should we not require smaller reporting to furnish a Conflict Minerals Report regarding their recycled or scrap minerals? As another example, if we require smaller reporting companies to furnish a Conflict Minerals Report with respect to recycled or scrap minerals, should we not require those issuers to have such Conflict Minerals Reports audited?

Given the intent of Congress, the size of company is less relevant than level of exposure to conflict minerals. This said no issuer, regardless of size, should have to provide a Conflict Minerals Report relating to scrap/recycled conflict mineral use.

F3. Termination, Revisions, and Waivers

69. Should our rules address specifically the Conflict Minerals Provision's revision, waiver, or termination requirements? If so, how should our rules address this?

No comment.

[16] Submission from the Kuala Lumpur Tin Market (January 17, 2011). See **U.S. Securities and Exchange Commission.** Proposed Rule: Conflict Minerals – Submitted Comments. [Online] 2011. http://www.sec.gov/comments/s7-40-10/s74010.shtml

[17] We understand this issue will be covered in more detail in a submission to the SEC from a group of investment community stakeholders, including members of the Social Investment Forum and the Interfaith Center on Corporate Responsibility.