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

(Via e-mail: rule-comments@sec.gov)

RE: Proposed Rule, "Conflict Minerals," File Number S7-40-10, 75 Fed. Reg. 80948
(December 23, 2010).

Dear Chairman Schapiro:

This is in response to the subject Federal Register notice in which the Securities and Exchange Commission ("SEC") seeks comment on a proposed rule to implement Section 1502 (the "Conflict Minerals Provision") of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Copper and Brass Fabricators Council urges the SEC to exempt recycled scrap from the requirements of the rule or, alternatively, to carefully craft the rule to encourage recycling and to treat product from recycled metals the same as virgin metal traceable to non-DRC sources.

The Copper and Brass Fabricators Council (Council) is a trade association that represents the principal copper and brass mills in the United States. The member companies account for the fabrication of more than 80% of all copper and brass mill products produced in the United States, including sheet, strip, plate, foil, bar, rod, and both plumbing and commercial tube. These products are used in a wide variety of applications, chiefly in the automotive, construction, and electrical/electronic industries, including many products meeting the national defense needs of the U.S. Some of the copper alloys used by the Council member companies include conflict minerals, primarily tin.

The Council's member company operations include melting and casting, rolling, extruding, and drawing of the semi-fabricated products listed above. Their products are sold to manufacturers who further process the materials for use in finished goods such as electronic products, appliances, automobiles, buildings, air-conditioning units, and the like. The companies' principal raw materials include virgin copper from the mines, master alloys containing alloying elements such as zinc, tin and others, and recycled scrap. The recycled scrap accounts for about 65% of the raw material input and virgin copper from mines for the remaining 35%. Recycled scrap used by the brass mills is a source of alloying elements that may include conflict minerals such as tin.

We submit the following comments for the Commission's consideration:

I. The Rule Should Classify As "Recycled" Both Post-Consumer Scrap And Industrial (New) Scrap Because The Source Of Conflict Minerals Is Untraceable, Both For Post-consumer Scrap And Industrial Scrap.

We appreciate that the proposed rule recognizes that the origins of scrap conflict minerals are not known. However, we are concerned that the rule seems to limit the definition of recycled scrap to only end-user or post-consumer scrap and would not consider partially processed materials as being "recycled." This appears to exclude industrial scrap (sometimes referred to as "new" scrap) generated by downstream manufacturers from the treatment given to recycled materials.

As indicated in the introduction, brass mills on average use about 65% recycled scrap for their casting raw material. While these manufacturers use a small amount of post-consumer scrap, the vast majority of the recycled scrap used as raw material comes from industrial scrap generated by downstream manufacturers and construction sites. Commonly, this scrap material is gathered from various sources and sites by independent scrap dealers whose job is to aggregate small quantities into large truckload quantities. Because of the wide variety of sources from which a truckload is amassed, it is no more possible to trace this industrial scrap to its original source than post-consumer scrap.

The Organization for Economic Cooperation and Development (OECD) has used an inclusive definition of recycled metals in its international guidance on conflict due diligence¹. The OECD excludes recycled metal from the due diligence requirements of the guidance and defines scrap as follows: "Recycled metals are reclaimed end-user or post-consumer products, *or scrap processed metals created during product manufacturing.*"² (emphasis added). The proposed rule appears to have adopted the first half of this definition while ignoring the last half, which is the industrial, new scrap described above.

We recommend that the term "recycled scrap" in the rule include industrial scrap (reclaimed materials) as well as post-consumer, end-user reclaimed materials.

II. The Rule Places Recycled Scrap Into An Undesirable Category That Carries Unwarranted Burdens That Do Not Advance The Purposes of the Act.

Again, we appreciate that the Commission has established a category for product produced from "recycled scrap" that would permit the product to be classified as "DRC Conflict Free." Nevertheless, the rule goes further and places on "recycled scrap" materials the burden of carrying out extensive due diligence to determine that the materials are indeed recycled, the burden of filing a "Conflict Minerals Report," and the burden of providing for expensive third party, independent certification. There is no discernible benefit from these burdens. While it is commendable that the Commission has recognized that the minerals in recycled scrap are in essence DRC Conflict Free, it is regrettable that a special category is created that sets recycled material apart from new material traced to be conflict free. This places product produced from recycled material

¹ Organization for Cooperation and Development, "OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas," 2010.

² Id., at page 6, fn2.

at a disadvantage as finished product manufacturers are likely to demand that they be supplied with unambiguously “DRC Conflict Free” product.

We concur with the International Precious Metals Institute in its analysis of the categories set up by the rule and submit that their analysis applies to industrial metals such as tin and copper as well.³ The commenters correctly note that the rule sets up three categories of companies: 1) those that know they have not used DRC conflict minerals, 2) those that cannot determine whether they have used DRC conflict minerals, and 3) those that know they have used DRC conflict minerals. The proposed rule favors those who use all virgin metal of known origin with category 1’s most-favored status. Meanwhile, those using recycled material must deal with the stigma of category 2 and the burdens this status carries. This is the case, even though recycled scrap is likely as pristine and DRC conflict-free as the virgin material. The categorization will create a preference for virgin metal of known origin at the expense of recycled scrap generated by downstream users with no ability to trace the origin of the original materials, resulting in undesirable consequences. The increased demand for virgin metal would certainly result in upward price pressure, making it even more profitable to mine conflict minerals in the DRC. Concurrently, the damage to the market for recycled metal would create an oversupply of this raw material. Lower scrap grades will likely be marginalized and routed to landfills. These outcomes must surely be at odds with the intent of Congress in enacting the legislation, which is to regulate ore and metal made from minerals mined from the DRC and adjoining countries.

III. Even In The Unlikely Case That Some Portion Of The Recycled Material Was Originally Mined In The DRC, The Recycling Of It Provides No Benefit To The Armed Groups Of Concern To Congress.

Industrial metals are recycled over and over again. Once a unit of industrial metal is mined, refined, and enters the stream of commerce, it can stay there for centuries. The unit may be recycled many times, but it only results in profit to the mine once. All subsequent recycling of that unit will not benefit the mine. In fact, the continuous recycling of the unit will diminish the prospects of the mining company because it reduces demand for new metal.

Some metal being recycled today was mined hundreds of years ago. For example, a century-old building is demolished and copper and copper alloy building materials are recovered and recycled. Conversely, some new scrap might contain metal that was recently mined. In either case, reclaiming the metal from post-consumer scrap or new scrap does not benefit the mine from which it originated. On the contrary, it is to the detriment of the mine for the metal in scrap to be reclaimed because recycling reduces the demand for newly refined metal from the mines. Even in the unlikely case that some part of the reclaimed metal scrap was originally mined in the DRC, the recycling of it provides no benefit whatsoever to the armed groups that Congress intended to deprive of funds. For this reason, the Commission need not be concerned about the origins of the conflict minerals in scrap because it is irrelevant to meeting Congress’ purposes.

³ Comments to U.S. SEC, International Precious Metals Institute, re: “Conflict Minerals – Proposed Rule (File Number S7-40-10), January 19, 2010.

IV. Rules And Policies That Discourage Recycling Will Be In Conflict With Numerous Other Government Policies Aimed At Encouraging Recycling.

Numerous government policies are in place to encourage recycling. A pound of industrial metal that is obtained by recycling existing scrap metal uses far less energy to create and results in a much smaller environmental footprint than a pound created from ore. Further, the reuse of mineral resources through recycling results in conservation of scarce natural resources, directly impacting sustainability. The higher energy cost of mined metal carries negatives from climate change to national security. For these and other reasons, recycling has been and continues to be favored by various government agencies and programs from the U.S. Environmental Protection Agency (EPA) to the Department of Energy. One example is the EPA's 3R Program that encourages consumer and industrial users to *reduce* waste, *reuse*, and *recycle* with an equal emphasis on consumer products and industrial materials. The proposed conflict minerals rule, to the extent it discourages recycling and harms the market for recycled products, will be in direct conflict with this and the other government policies aimed at encouraging recycling.

In summary:

Conflict minerals from recycled scrap should be exempted from the classifications in the rule. Alternatively, conflict minerals contained in recycled scrap should be treated in the same fashion as newly mined conflict minerals that did not originate in DRC countries. For conflict minerals in recycled scrap, the issuer should be able to disclose on its internet website that the minerals may be contained in recycled scrap, but the issuer should not be required to submit anything further to the Commission. Thus, no certified independent private sector audit and no Conflict Minerals Report would be required, just as in the case of new metal that does not originate in DRC countries. Similarly, the two classes of materials should be classified as "DRC Conflict Free," as proposed in the rule.

Thank you for this opportunity to comment on the proposed rule.

Very truly yours,



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