

**Comments on SEC Proposed Rule  
on  
Conflict Minerals**

**17 CFR Parts 229 and 249  
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**Conflict Minerals**

**IPC-Association Connecting Electronics Industries**

**March 2, 2011**

*Association Connecting Electronics Industries*



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### **APPENDIX A IPC Burden Survey**

### **APPENDIX B IPC-Association Connecting Electronics Industries, Comments on SEC Regulatory Initiatives Under the Dodd-Frank Act Title XV: Miscellaneous Provisions- Section 1502 Conflict Minerals (P.L. 111- 203), November 22, 2010**

## **I. Executive Summary**

IPC – Association Connecting Electronics Industries is pleased to provide these comments in response to the Security and Exchange Commission (SEC) proposed rule on Conflict Minerals (S7-40-10).

IPC, a U.S. headquartered global trade association, represents all facets of the electronic interconnect industry, including design, printed board manufacturing and electronics assembly. Printed boards and electronic assemblies are used in a variety of electronic devices that include computers, cell phones, pacemakers, and sophisticated missile defense systems. IPC has over 2,700 member companies. As a member-driven organization and leading source for industry standards, training, market research and public policy advocacy, IPC supports programs to meet the needs of an estimated \$1.7 trillion global electronics industry.

IPC supports the underlying goal of the proposed rule that implements the measure described in Section 1502 of the Dodd-Frank Act (Public Law 111-203), which is to prevent the atrocities occurring in the Democratic Republic of Congo (DRC). We understand that those perpetrating the atrocities are obtaining funding from the minerals trade and that the aim of Section 1502 is to cut off this funding. The electronics industry, including IPC members, is actively involved in a number of initiatives that seek to improve control and transparency in the mining and refinement of conflict minerals.

IPC encourages the SEC to implement the requirements of Section 1502 in a manner that supports the goals of the statute without unduly burdening U.S. manufacturing industries or causing unnecessary disruptions of the minerals trade, which is vital to the livelihood of the people of the DRC. Our comments detail our concerns regarding the potential significant and unintended effects that the implementation of the regulation may have and offer suggestions for minimizing the negative effects of the proposed regulation. Specifically, IPC recommends that the SEC allow companies the flexibility to develop appropriate due diligence measures, recognize ongoing efforts to improve the transparency of the supply chain, address the need to phase-in requirements, and provide the necessary time to implement these measures. It is important that the regulations acknowledge the realities of the situation on the ground in the DRC, the complexities of the international minerals trade, and the broad and diverse global electronics supply chain.

Finally, IPC believes the SEC's analysis on the impact of the regulation significantly underestimates the impact and cost to U.S. manufacturers. A survey<sup>1</sup> conducted of IPC members in the electronic interconnection portion of the electronics supply chain indicated median due diligence burdens in excess of \$65,000 (USD) per company in the first year. Additional

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<sup>1</sup> Results of an IPC Survey on the Impact of U.S. Conflict Minerals Reporting Requirements, February 2011.

estimated costs for tracking software, additional staff, training, legal expenses, and third party audits had a median total of \$170,000 (USD). For this segment of the electronics supply chain, namely printed circuit board (PCB) and electronic manufacturing services (EMS) companies along with their suppliers, the estimated cost impact of due diligence is estimated at roughly 279 million dollars in the first year alone, with ongoing annual costs expected to be around 165 million dollars.

We encourage careful review of the burdens imposed by this regulation by the Office of Management and Budget (OMB) in respect to the requirements of the Paperwork Reduction Act regarding information collection. Given the significant estimated burdens associated with the proposed regulations, we encourage the SEC to seriously consider the implementation of phase-in and de-minimis rules which can significantly reduce the burden of the proposed regulation while still meeting legislative intent.

## **II. General Comments**

Supply chains in the electronics industry are an extremely complex, multi-layered network of global trading companies and suppliers. Electronic products are sourced and consolidated from multiple countries and multiple manufacturers. A detailed description of the electronics industry and its supply chain are provided in our November 22, 2010 comments which are included as Appendix B to these comments.<sup>2</sup> Typically, companies who purchase products that may contain conflict minerals only have direct contact with the first tier supplier or company immediately upstream from themselves.

Due to the complexity of the supply chain, there are major challenges for downstream users attempting to establish a chain of custody from the mine to the product: 1) tracing conflict minerals from finished products back through complicated supply chains to the smelter; 2) tracing ores from the smelter back to the mines of origin; and 3) identifying which mines are conflict mines—that is, mines whose output is controlled by or taxed by warring factions.

Companies' attempts to gather data regarding the use of the six substances restricted under the European Union Restriction on Hazardous Substances (RoHS) in Electrical and Electronic Equipment Directive illuminates the difficulties involved in working with highly complex supply chains. It took several years for the supply chain to develop knowledge and information regarding the presence of just six substances. Conflict minerals information gathering is expected to be of similar difficulty.

The problems associated with conflict minerals originate significantly upstream from the companies that are subject to the new legislation. As discussed in our November 2010

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<sup>2</sup> IPC-Association Connecting Electronics Industries, Comments on SEC Regulatory Initiatives Under the Dodd-Frank Act Title XV: Miscellaneous Provisions- Section 1502 Conflict Minerals (P.L. 111-203), November 22, 2010. Included as Appendix B.

comments, before the actions of downstream companies can have any effect a reasonable period of time is necessary to allow further development of industry-led efforts to work with refiners and smelters to create a process for validating the source of minerals to downstream users.

Currently, it is nearly impossible for downstream users to certify with any level of credibility that their products do not contain conflict associated conflict minerals without withdrawing from the region entirely. Until on-the ground traceability and smelter validations are implemented, the only source of conflict-free conflict metals will be from outside the DRC and adjacent countries. Withdrawal from the region would impose very substantial financial hardship to the thousands of legitimate miners, traders, comptoirs and negociants in the region that depend on the minerals trade.

We strongly recommend that the SEC adopt a phased approach to implementation of these regulations to maximize the benefit of the proposed regulations without causing unnecessary damage to the legitimate minerals trade. Without addressing the issues of timing and transition, the regulations could have a substantial negative impact on the health of the U.S. economy, jobs, manufacturing, and exports while negatively impacting the welfare of the very people the regulation is intended to assist.

### **III. Response to Specific Questions Proposed by the SEC**

#### **A. Issuers That File Reports Under the Exchange Act**

*Question 1: Should our reporting standards, as proposed, apply to all conflict minerals equally?* IPC proposes that the regulation be phased-in such that while eventual treatment of all minerals will be equal, there would be a transition phase during which applicability to each mineral would be according to the schedule put forth in the detailed discussion provided in response to Question 61. The purpose of this phase-in approach would be to match the implementation of requirements for conflict-free conflict minerals with the development of infrastructure for identifying conflict free conflict minerals and their derivatives.

*Question 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?*

The proposed rules would present an extensive burden to small and large companies, particularly in the initial years following implementation. Phased implementation of the rule, as discussed in our responses to Questions 58 and 61, would greatly mitigate the imposed burden by allowing the necessary time for companies to work together and implement smelter validation audits and other necessary infrastructure in a speedy and efficient manner.

The provision of limited disclosure and reporting obligations for smaller companies is unlikely to significantly reduce the burdens on small companies as most small companies are suppliers to larger companies. As the larger companies will still be required to comply, they will likely impose contractual requirements on the small companies regardless of SEC exemptions for small companies. Smaller companies may not have the leverage needed to extract the necessary information from their supply chain, especially if that supply chain extends outside the United States. Additionally, if these smaller companies are exempt or their compliance deadlines are extended, it will be much more difficult for the larger companies to get the information they need to comply with the regulation.

*Question 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?*

A broader reporting system is beyond the scope of the legislation and may be beyond the SEC's authority. Implementation of such a broad reporting system would unduly burden the SEC. Furthermore, it has not been established whether the incremental benefit of such a broad system would legitimize the significant additional burden imposed on industry and the Administration. Any such broadening of the reporting scheme should be undertaken only after a system to meet the legislative requirements under Section 1502 of the Dodd-Frank Act is successfully implemented and evaluated.

*Question 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?*

Compliance with the proposed rules will impose a significant burden on all subject companies and their suppliers. Regardless of the SEC's action with regard to broadening those subject to the proposed regulation, as discussed Question 6, some companies (especially non-U.S. companies that are not U.S. issuers) will remain outside the SEC's jurisdiction and therefore will enjoy a significant competitive advantage over companies that do file reports with the SEC. The SEC can lessen the competitive disadvantage imposed on U.S. issuers by phasing-in implementation of the rule, as discussed in our responses to Questions 58 and 61. A phased implementation of the rule would greatly mitigate the imposed burden by allowing the necessary

time for companies to work together and implement smelter validation audits and other necessary infrastructure in a speedy and efficient manner.

## **B. “Manufacture” and “Contract to Manufacture” Products**

*Question 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 a minimum, mandate that the product be manufactured according to particular specifications?*

The SEC should require a minimum level of influence, involvement, or control over the manufacturing process before an issuer must comply with the proposed rules. Electronics Manufacturing Service (EMS) or contract manufacturers assemble electronics for Original Equipment Manufacturers (OEMs) or name brands. The EMS provider is often responsible for all manufacturing of the product sold by the OEM. In many cases the OEM specifies all parts in the product through an Approved Supplier List (ASL). Although many of these items contain conflict minerals, the EMS provider typically does not control selection of suppliers or materials sources. Issuers who purchase or assemble products from an ASL controlled by their customers should be exempted from the proposed reporting requirements for those items they do not specify. The OEM or other appropriate design/ASL owner should still be subject to the proposed rules. The EMS provider should be required to report only on the parts or supplies that they specify.

## **C. When Conflict Minerals are “Necessary” to a Product**

*Question 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? 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?”*

The SEC should not consider conflict minerals necessary to the production of a product if they are not contained in the product but are necessary to the functionality or production of a physical tool or machine used to produce a product. The SEC should not consider conflict minerals necessary to the production of a product even if the tool or machine used to produce the product was manufactured for the purpose of producing the product. Such an approach would be much broader than intended by the legislation. Additionally, such an approach would be very difficult for the SEC to implement or enforce, given the difficulty of determining and verifying which equipment is designed for what production process. Finally, this reporting may be unnecessarily duplicative, as any issuer manufacturing tools or machinery would be required to comply with the proposal if conflict minerals are necessary for the functionality of the tool or machine.

#### **D. Location of Disclosure**

*Question 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 with necessary conflict minerals that did not originate in the DRC countries should not be required to disclose any information other than as proposed. Requiring such an issuer to disclose the countries from which its conflict minerals originated would be beyond the scope of the legislation, would increase the burden of the regulation, would serve no additional benefit, and could require the issuer to reveal confidential business information.

Section 1502 of the Dodd-Frank Act specifically identifies those who are required to disclose information to the SEC. The legislation only creates an affirmative reporting obligation for issuers whose conflict minerals “did” originate from the conflict regions in the DRC or adjoining countries. The legislative history of this provision also supports reporting only by those whose conflict minerals “did” originate in the DRC or adjoining countries. Earlier iterations of the legislation included language requiring issuers whose conflict minerals “did or did not originate” from the DRC or adjoining countries to disclose to the SEC. During the legislative conference on the legislation, “did not” was purposefully removed from the section to only require companies whose minerals originated in the region to report to the SEC.

#### **E. Standard for Disclosure**

*Question 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?*

IPC agrees that a reasonable country of origin inquiry would establish an appropriate standard for determining whether an issuer's conflict minerals originated in the DRC countries for purposes of implementing the Conflict Minerals Provision. We also agree that a reasonable country of origin would depend on the issuer's particular facts and circumstances including factors such as the size of the issuer, the nature of the issuers' product, the issuers' relationship with the supplier. Further, we agree with the SEC that the reasonable country of origin inquiry requirement does not suggest that issuers would have to determine with absolute certainty whether their conflict minerals originated in the DRC countries, as a reasonableness standard is not the same as an absolute standard.<sup>3</sup> Finally, we would welcome general non-binding SEC guidance as to what would constitute a reasonable country of origin inquiry standard.

*Question 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?*

It is extremely important that the regulations permit and encourage issuers to rely on reasonably reliable representations from their processing facilities, both directly or indirectly through their suppliers, to satisfy the reasonable country of origin inquiry standard. Given the complex nature of the electronics and other manufacturing supply chains it would be extraordinarily inefficient if each member of the supply chain were required to conduct a complete country of origin inquiry to the smelter, or even less practically, to the mine. If issuers are not able to rely on reasonably reliable representations from their processing facilities, both directly or indirectly, the burden of this regulation will be significantly increased. Failure to recognize supply chain based determinations will result in gross inefficiency and excessive burden as every downstream user at every level of the supply chain will inundate upstream suppliers with requests for information. We do not believe that the SEC needs to provide additional guidance regarding what would constitute reasonably reliable representations. We believe that the nature of a reasonably reliable representation will vary significantly based on the relationship between the customer and the supplier and is best judged by those making the inquiry.

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<sup>3</sup> II(C)2 SEC Proposed Rule on Conflict Minerals, 17 CFR Parts 229 and 249, Release no. 34-63547; File No. S7-40-10, RIN 3235-AK48.

## **F. Content of Conflict Minerals Report**

*Question 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?*

First, the rule should make clear that issuers are not required by the statute or the rule to physically label their products in any way with regard to the presence or absence of conflict minerals. Sec. 1502 of the legislation only requires companies that “did” source from the conflict regions in the DRC or adjoining countries to submit a conflict minerals report (CMR) and only instructs that a product “may be labeled as ‘DRC conflict free’ if the product does not contain conflict minerals...” The legislation does not mandate that the SEC require issuers to label their products as not DRC conflict free.

The SEC rules should not require issuers that are unable to determine the origin of their conflict minerals to label or otherwise designate their products that contain such minerals as not “DRC conflict free” as the status of the materials in regard to DRC conflict has not been determined. It would be more accurate to allow such issuers to label such products differently, such as “DRC Conflict Mineral Status not Determined.” We believe this approach is particularly necessary in the early years of the rule as there is currently insufficient infrastructure for companies to determine if the conflict minerals in their products are or are not “DRC conflict free.” At a minimum, we recommend that the SEC allow companies to designate their products as “May Not Be DRC Conflict Free” until 2013 when it is expected that companies will be able to purchase processed conflict minerals from smelters that have been validated as “DRC conflict free.”

*Question 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?*

The SEC should 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. Given the broad applicability of this rule, it would be very difficult for the SEC to prescribe the most appropriate, useful, and efficient way of describing products that contain conflict minerals. In attempting to specify the manner in which

issuers describe their products that contain conflict minerals, the SEC risks requiring a report that is difficult to read and overly burdensome to produce.

*Question 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?*

The SEC should, 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. As discussed previously, under our response to Question 37, Sec. 1502 only requires companies that “did” source from the conflict regions in the DRC or adjoining countries to submit a CMR. Requiring issuers to disclose the facilities, countries of origin, and efforts to find the mine or location of origin for all of its conflict minerals would be overly burdensome and beyond the requirements of the legislation.

*Question 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 SEC 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. In addition to being far beyond the requirements of the legislation, this suggested requirement would be extremely burdensome. As discussed previously, the electronics industry supply chain is extremely long and complex. Once minerals are processed at the smelter, or consolidated prior to smelting, it is impossible to identify individual shipments. As most issuers do not have their own smelters, minerals being brought into the smelter cannot be assigned to processed metals sold to individual issuers. Requiring such reports from issuers is impractical.

## **G. Due Diligence Standard in the Conflict Minerals Report**

*Question 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?*

IPC appreciates that the SEC recognized the varying circumstances affecting the broad range of issuers affected by this rule by not prescribing the type of due diligence required under this rule. Prescribing or otherwise specifying required due diligence would impose significant burdens on issuers, especially those that are small businesses. We believe that the SECs requirement for describing the due diligence used in the CMR is appropriate.

*Question 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?*

It is extremely important that the regulations permit and encourage issuers to rely on reasonably reliable representations of smelters or any other actor in the supply chain by explicitly supporting the acceptability of supply chain approaches to due diligence. The necessary processing and consolidation of conflict minerals into metals used by issuers and their suppliers makes it nearly impossible to trace conflict minerals and their derivatives back to the mine. Further, many issuers have contact only with their direct suppliers, or perhaps their suppliers' suppliers. Because of the length and complexity of the electronics supply chain, many issuers do not have visibility to the smelter. It would be extraordinarily inefficient if not impossible for each member of the supply chain to attempt to independently research and verify all the way back to the mine of origin for the conflict minerals contained in their product. If issuers are not able to rely on reasonably reliable representations from their supply chain, the burden of this regulation will be significantly increased.

*Question 54: Should our rules prescribe any particular due diligence standards or guidance?*

The SEC should not require the use of specific due diligence standards or guidance. IPC appreciates that the SEC recognized the varying circumstances affecting the broad range of issuers affected by this rule by not prescribing the due diligence required under this rule. Prescribing or otherwise specifying required due diligence would impose significant burdens on issuers, especially those that are small businesses.

The SEC should, however, identify examples of acceptable due diligence standards or guidance. Provision of a list of acceptable standards and guidance will provide important assistance to issuers without hampering their ability to comply in a manner that is both efficient and appropriate for their circumstances.

*Question 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?*

As discussed in response to Question 54, we believe that the SEC should not require the use of specific due diligence standards or guidance as this would impose a significant burden on certain issuers. The SEC should, however, provide assistance to issuers by identifying examples of acceptable due diligence such as industry developed smelter validation audits, the bag and tag scheme being developed by ITRI, information or standards provided by the Department of State or other federal agencies, the OECD standards, and others.

## H. Furnishing of the Initial Disclosure and Conflict Minerals Report

*Question 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,<sup>149</sup> 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?*

The SEC should permit any and all issuers to file an amendment to their annual report within a specified period of time subsequent to the due date of the annual report, to provide the conflict minerals information. As discussed previously, there is currently a significant infrastructure gap which makes it difficult for all issuers to immediately meet the requirements of this regulation. By allowing for this delay, the SEC will provide the necessary time for implementation of essential mineral traceability infrastructure including the ITRI traceability and Electronics Industry Citizenship Coalition (EICC)/ Global e-Sustainability Initiative (GeSI) smelter validation programs. Full implementation of these infrastructure programs will provide issuers with the information they need to comply with the proposed regulations in an accurate and efficient manner.

*Question 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)?*

As discussed in our previous comments that were submitted to the SEC in November 2010, a number of governmental and non-governmental initiatives are underway to increase supply chain transparency for conflict minerals. These systems are in their infancy. Further, they are hampered by insecurity on the ground in the DRC as well as governmental actions that have shut down some of the mines for an unknown period of time. It is highly unlikely that a full scale-up of these programs will be possible in time to allow issuers to rely upon them in the year immediately following implementation of the regulations. The SEC should therefore use its discretion to implement a phased-in approach to the regulations requiring issuers to identify conflict minerals that do not qualify as DRC conflict free.

Failure to establish a realistic, implementable time-line for required supply chain transparency will result in significant, negative unintended consequences for those engaged in legitimate minerals trade. As it will be impossible to implement measures to provide chain of custody from all conflict mines to smelters by the legislative implementation date of April 2011, companies required to declare the conflict status of the conflict minerals in their products will likely seek supply chains outside of the DRC and the adjacent countries. While the minerals trade represents a significant, and often only, source of income for many in the region, the supply of minerals from this region is not critical to world markets. In order to be able to label their products DRC conflict-free, issuers will have no choice but to impose a de-facto ban on minerals originating in the DRC. This will impose significant financial hardship to thousands of

legitimate miners, traders, comptoirs and negociants in the region that depend on the minerals trade.

In order to avoid imposing a de-facto ban on legitimate minerals trade from the DRC and adjacent countries, we recommend that the SEC establish a transitional category of conflict minerals of indeterminate source. Provision of this third category for classifying conflict minerals should be of a short and temporary nature according to a schedule that will allow enough time for implementation of supply chain traceability in the DRC and adjacent countries. By providing a third category of conflict minerals for a transitional period approach, companies will not be encouraged to impose a de-facto ban on legitimate trade from the DRC in order to avoid identifying their products as supporting conflict in the DRC.

Phased-in implementation of these rules should apply equally to large and small companies. Provision of phased implementation only for smaller companies is unlikely to significantly reduce the burdens on small companies as most small companies are suppliers to larger companies. As the larger companies will still be required to comply, they will likely impose contractual requirements on the small companies regardless of the SEC exemptions for small companies. Additionally, if these smaller companies are exempt or their compliance deadlines are extended, it will be much more difficult for the larger companies to get the information required to comply.

### **Proposed Plan for Phase-in of Rules**

As discussed in our previous comments, industry developed on-the-ground tracking and smelter audit systems will play a critical role in the ability of the supply chain to identify conflict minerals that are DRC conflict free. For this reason, IPC is proposing a three year phase-in of these rules based upon the anticipated dates at which on-the-ground tracking systems are in place and supplying verifiable “conflict-free” minerals and a significant number of smelters have been audited and their products validated as “DRC conflict free.”

EICC/GeSI development of validation programs to identify and verify that smelters are using conflict free conflict minerals is well underway. Validation of tantalum smelters began in September 2010. Identification of and contact with wolframite smelters was completed in 2010. Smelter visits and development of the audit protocol for wolframite smelters are expected to be completed in 2011, with smelter validation audits to follow. Cassiterite smelter visits were completed in 2010. Development of the audit protocol began in 2010 and is expected to be completed in early 2011. Cassiterite smelter validation audits are scheduled to commence in first quarter 2011. Identification of and contact with gold smelters began at the end of 2010. Refiner visits and development of the audit protocol for gold will be initiated in 2011, with refiner validation audits to follow. Should no significant obstacles be encountered, validated smelters and refiners of all four conflict minerals are likely to be completed by the end of 2012.

Once traceable conflict free conflict minerals are available to the smelters, it will take approximately one year for these minerals to be smelted and move through the supply chain for incorporation into components of complex, finished products. It is only once these important

traceability and transparency measures are implemented will it be possible for companies to source conflict minerals from conflict free sources in the DRC and adjacent countries. Therefore, in order to support the continued development of legitimate trade, it is necessary for the SEC phase in the requirements by establishing transitional rules.

The intention of this phase-in schedule is not to delay implementation of the rules, create loopholes or otherwise exempt issuers. The intention is to better align the requirements under the regulations with the availability of minerals and mineral derivatives that can be certified DRC conflict free. All issuers subject to the law would provide an annual report on their use of conflict minerals the first complete year the regulation is in effect. The phase-in schedule merely dictates the level of detail and type of report that will be submitted. Our proposed phase-in implementation is also consistent with the requirements of the law. Sec. 1502 (b) requires companies:

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

Such language only requires and creates an affirmative obligation to disclose and submit a conflict minerals report *if the issuer knows* that the minerals in its products originated in the DRC or adjoining countries. If the issuer is *unable to determine* that the minerals originated from the DRC, the authorizing statute creates no further obligation for the issuer. Therefore, it is within the SEC’s discretion to create transition requirements for a temporary period when it is likely that a large portion of the materials will be of unknown origin.

We recommend the implementation of a three year phase-in of the regulations concerning the origin of conflict minerals. During fiscal years 2012 to 2014, we recommend that issuers be required to disclose to the SEC that specific conflict minerals are necessary to the functionality of a product manufactured by the issuer. Disclosure would include a statement in the body of an annual report including a description of the company’s conflict minerals policy; and a statement to the effect of “We have implemented a conflict minerals policy across our supply chain. Due to the lack of infrastructure in place in the region and around the world it is not possible to determine the origin of (insert conflict mineral name).” The company’s conflict minerals policy must also be published on the company’s website. Companies that are unable to determine the source of their conflict minerals would not be required to complete a CMR, as the legislation requires such a measure only for companies whose conflict minerals *did* originate in the DRC or adjacent countries. After the fiscal year 2014, it is expected that sufficient infrastructure will have been developed to permit companies to determine the source of their conflict minerals and the unknown determination category would no longer be available. Implementation of this phase-in would provide for an orderly, cost-efficient transition that promotes the goals of the legislation without inflicting undue burdens and harm upon U.S. issuers, their suppliers, and those engaged in the legitimate trade of conflict minerals from the DRC.

## **I. Time Period in Which Conflict Minerals Must be Disclosed or Reported**

*Question 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?*

The SEC should allow individual issuers to establish their own criteria for determining which reporting period to include any required conflict minerals disclosure or Conflict Minerals Report. Allowing issuers to establish their own criteria for the reporting period will allow issuers to select a reporting period that is consistent with their existing internal processes, thereby minimizing the burden of data collection and reporting.

*Question 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?*

In order to make the reporting requirements useful and practicable, it is necessary for the SEC to implement transition rules to address aboveground minerals stocks already present in the supply chain when the regulation is implemented. Additionally, regulations will be needed to address minerals from a mine that changes status from “non-conflict” to “conflict.” Without transition rules, it will be nearly impossible for users of conflict minerals to be able to identify themselves as “conflict-free,” until the regulations have been in place for a number of years and all stocks existing prior to the implementation of the regulations have been used. Failure to implement transition rules will render the initial years of the regulation virtually meaningless.

Although a number of efforts to establish a supply of “conflict-free” minerals through the implementation of on-the-ground tracking systems and a smelter verification program are underway, it will be some time before these processes have been fully implemented and validated. It is therefore necessary to establish a transition period that exempts minerals or processed metals already at smelters, processing centers, or other downstream positions in the supply chain that were obtained prior to a specified implementation date. If there is no transition rule for materials already in the supply chain prior to a validation program being implemented then all smelted minerals for the initial reporting will have to be reported as being of unknown



origin. This is because manufacturers will be unable to obtain the information as all minerals are comingled without respect to country or mine of origin.

Similarly, products manufactured with the refined metals already incorporated in finished goods or from conflict minerals already in the suppliers' inventories prior to an established implementation date should be exempt. This exemption will allow for the design and implementation of programs to impose identification requirements on their upstream supply chains. Again, absent a transition rule, issuers will be forced to identify all products as containing conflict minerals of unknown origin in the initial reporting period.

We encourage the SEC to adopt a no-transubstantiation rule stating that if a mineral is 'conflict-free' when it arrives at the smelter, it cannot become "conflict-associated" if its mine of origin changes status during the period that the mineral/refined metal is moving through the supply chain.

The State Department has recognized proper identification of mines are controlled by parties perpetrating atrocities to be a significant challenge. From the extraction of the minerals from the mines to the incorporation of the refined metals into products manufactured in the United States, significant time will pass and "conflict mines" will likely change status. For this reason, a no-transubstantiation rule is recommended.

## **J. Materiality Threshold**

*Question 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?*

IPC recommends that the SEC adopt a de minimis threshold in their rules. A de minimis standard is not a loophole or exemption and it will not decrease efforts to increase supply chain transparency. We believe that this type of de minimis threshold is consistent with the Conflict Minerals Provision because it does not affect the underlying goal of increasing transparency in the mineral supply chain. Rather, it allows the SEC and issuers to focus on the products containing a significant amount of the conflict minerals in a manner that will change supply chain behavior.

In terms of tracing materials in products, a material usually must reach a certain threshold before it is possible to identify its presence in a part or component. Therefore, consistent with other regulatory schemes, we propose that the products containing less than 0.1% by weight of a conflict mineral be exempt from these rules. Typically, if legislation does not specifically prohibit an agency from creating a de minimis standard then it is at the discretion of the agency to do so. We encourage the SEC to develop an appropriate de minimis standard. In numerous other regulations in which companies are required to trace raw materials, a de minimis standard is created (e.g., the European Union's Registration, Evaluation, and Authorization of Chemicals (REACH) Regulation, the Lacey Act, RoHS, and the Berry Amendment). A de minimis standard

is not a loophole or exemption and, if properly designed, will not materially decrease efforts to increase supply chain transparency.

Alternatively, the SEC could exempt products with de minimis concentrations of conflict minerals from requirements pertaining to country of origin inquiries and the preparation of a conflict minerals report while still requiring companies to disclose the presence of conflict minerals in their products and to implement a corporate conflict minerals policy.

Should the SEC not wish to implement permanent de minimis standards, we recommend the use of de minimis standards for phasing-in the regulation. Several regulations, such as the European Union's REACH Regulation, employ a similar phased approach whereby manufacturers and importers of large volumes of chemicals have the earliest reporting dates and manufacturers of smaller volumes begin reporting several years later. By focusing only on significant uses of conflict minerals first, the SEC would improve the efficiency of implementation and ease the compliance burden on some of the less significant users of conflict minerals, while maintaining consistency with the intent and goals of the rules.

## **K. Recycled and Scrap Minerals**

*Question 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?*

We support the exemption of recycled or reclaimed metals from the proposed rules. However, we do not believe that the SEC should not require issuers using conflict minerals from recycled or scrap sources to furnish a Conflict Minerals Report, including a certified independent private sector audit. Instead, the final rule should include an alternative approach for recycled or scrap sources that is practicable and does not overly burden recycled materials so as to discourage their use.

We believe Congress intended to regulate ore and metal refined directly from minerals mined from the DRC and adjoining countries. Treating recycled or reclaimed metals in a manner that is analogous with materials determined to be DRC conflict free is consistent with the congressional intent, to stop funding the atrocities in the DRC. The DRC rebel groups are funded by operating mines to extract and sell ore, and by extracting tariffs from those transporting ore. The DRC rebel groups do not obtain revenue from trading in recycled materials. Accordingly, recycled metal was not intended to be covered by the statute and should be excluded from the provisions applying to conflict associated conflict minerals.

Given other government efforts to encourage recycling in electronics and other industries, it is imperative that the SEC does not diminish these efforts by adding significant regulatory burdens to the use of recycled or reclaimed conflict minerals.

The final rule should include an alternative approach for recycled or scrap sources because the proposed approach, which would require issuers using conflict minerals from recycled or scrap sources to furnish a CMR, is unworkable. Issuers who purchase minerals as raw material should be able to determine, based on a reasonable inquiry, if the metals are recycled or scrap. The same standard for determining that the minerals did not originate from conflict mines in the DRC or adjoining countries should apply to recycled materials. Under such a system, issuers are still accountable to the SEC for providing fraudulent information and thus cannot simply state that their metals are recycled without verifying the metals' origins.

Treating recycled materials in the same manner as materials from conflict sources is illogical. By the very nature of the material, an issuer using a recycled material will not be able to provide any of the details required in a CMR. The traceability of the reclaimed metals is impossible to track due to the various forms of recycling and thousands of consolidators, reclaimers, and scrap dealers both foreign and domestic. Instead, issuers should have a reasonable basis for believing the material is recycled and maintain auditable records to support the determination.

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

The use of recycled materials should not be discouraged, yet by creating a standard for recycled materials that is impossible to implement, the SEC will push companies away from using recycled materials. Use of recycled materials is a significant part of the metal trade and needed to decrease the demand for minerals from the conflict regions in the DRC or adjoining countries.

*Question 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?*

IPC believes reasonable inquiry is a more appropriate level of inquiry for recycled materials. As discussed previously, we believe that requiring a certified independent private sector audit of conflict minerals sources is unnecessarily burdensome and would unduly discourage the use of recycled metals.

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

IPC believes that due diligence is the appropriate requirement for verifying recycled or reclaimed conflict minerals. We believe that requiring an independent private sector audit of that report will unnecessarily increase the burden of using recycled materials. As discussed in Question 54, the SEC should not prescribe specific due diligence. IPC appreciates that the SEC recognized the varying circumstances affecting the broad range of issuers affected by this rule by not prescribing the due diligence required under this rule. Prescribing or otherwise specifying required due diligence would impose significant burdens on issuers, especially those that are small businesses.

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

All conflict minerals are recycled and reclaimed. Therefore the provisions for recycled and reclaimed conflict minerals should be applied equally to all regulated materials.

*Question 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?*

IPC believes that the proposed requirements for recycled and scrap materials are more burdensome than necessary. While it is impossible to eliminate all risks, we believe the proposed requirements will be more than necessary to eliminate 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.

*Question 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?*

As discussed in Question 5, the provision of limited disclosure and reporting obligations for smaller companies is unlikely to significantly reduce the burdens on small companies as most small companies are suppliers to larger companies. As the larger companies will still be required to comply, they will likely impose contractual requirements on the small companies regardless of an SEC exemption for small companies. Additionally, if these smaller companies are exempt or their compliance deadlines are extended, it will be much more difficult for the larger companies to get the information required to comply.

## **L. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation**

*Question 70: We request comment on whether the proposed rules, if adopted, would promote efficiency, competition, and capital formation or have an impact or burden on competition. Commentators are requested to provide empirical data and other factual support for their view, if possible.*

As discussed in many of our previous responses, IPC believes that the proposed rules will pose a significant burden on issuers. Both the Country of Origin inquiry and the preparation and certification of the Conflict Minerals Report will require a significant investment of time and resources by issuers. Many issuers compete directly with non-issuers that are not bound by these rules. This places issuers at a significant competitive disadvantage. In particular, U.S. issuers are at a competitive disadvantage as compared to their foreign competitors, most of which are not U.S. issuers and therefore are not required to comply with the burdens of the proposed regulation. IPC encourages the SEC to promote efficiency and minimize the competitive disadvantages posed by these rules by adopting the de-minimis threshold and phase-in approach discussed previously.

## **IV. Comments on Cost Estimate**

IPC believes the SEC has significantly underestimated the burden imposed by this rule. The SEC has underestimated the number of issuers affected by the rule as well as the burden of complying with the rule. IPC recommends that the SEC significantly revise their cost estimate and consider adoption of measures that would reduce the anticipated burden.

The SEC has underestimated the number of issuers affected by the rule. In preparing this rule and the accompanying cost estimates, the SEC has focused on the four most common derivatives of the conflict minerals identified in the legislation. However, the legislation applies to, “(A) columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives; or (B) any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country.” Setting aside the possible designation of additional minerals by the Secretary of State, the SEC has failed to identify additional common derivatives, the issuers whose products contain these derivatives and the cost to be incurred by issuers whose products contain these derivatives. The SEC must identify all common derivatives of the regulated conflict minerals and include those derivatives in its cost estimates.

The SEC has incorrectly estimated the number of issuers that will need to prepare a Conflict Metals Report (CMR). The SEC assumes that since the DRC and adjacent countries may account for less than 20% of the world’s supply of tantalum and the common derivatives of other conflict minerals, only 20% of affected issuers will be required to complete a CMR. This is a flawed assumption because 1) the minerals supplied by the DRC may be distributed such that they account for 20% of the supply for 100% of users, and 2) the vast majority of users will be unable

to identify the origin of their conflict minerals, especially until more viable audit and tracking systems are in place, and therefore will need to complete a CMR. It is expected that nearly 100% of affected issuers will need to complete a CMR, especially in the initial years of the regulation. A phased implementation of these rules, as discussed in our responses to Questions 58 and 61, could have a significant impact on the number of issuers affected by these regulations.

The SEC has significantly underestimated the burden of meeting the proposed requirements. To better assess the specific implications of the proposed rules, IPC conducted a survey of our members in the electronics supply chain. The complete report, including respondent demographics, is attached as Appendix A to these comments and summarized in the following paragraphs.

The demographics of survey respondents were reasonably representative of IPC members. Nearly 60 percent of survey respondents were in the EMS sector of the electronics supply chain. PCB manufacturers represented 25 percent of survey respondents, and suppliers to these industries represented the remainder of respondents. Approximately one third of survey respondents were publicly held companies regulated directly by the proposed rule. Privately held companies, which represented two thirds of respondents, anticipated being impacted by the requirements of the rule despite not being directly regulated. The survey sample was balanced in terms of representation by companies of various sizes, with one third of respondents being from small companies and forty percent of respondents being from medium-sized companies. There was a wide range in company size, with respondents citing between two and 190,000 employees, with a median size of 181 employees.

Respondents to the IPC survey had a median of 163 direct suppliers. Of those suppliers, approximately one third, or 54 suppliers, were known to be supplying products containing conflict minerals. A median of 25 percent, or 40 suppliers, were believed to be supplying products or materials free of conflict minerals. For a median of 30 percent, it was unknown whether supplied products contained conflict minerals. For the EMS providers, the percentage of suppliers for which it was unknown whether supplied product contained conflict minerals was significantly higher, at 38 percent.

Based on the survey, IPC members expect to spend a median of 1,300 hours in the first year to conduct due diligence, including identification of the supplied products containing conflict minerals (180 hours), identification of the country of origin for all supplied conflict materials (350 hours), identification of mines that supplied conflict minerals from the DRC or adjacent states (475 hours), and gather data, assemble and file the CMR (200 hours). Median due diligence efforts in subsequent years are expected to be over 500 hours per company. As a sector, EMS companies predicted significantly higher burdens, predicting a median first year burden of 2,280 hours with median subsequent year burdens totaling 850 hours per company.

Electronic interconnection industry suppliers, namely PCB and EMS companies and their direct suppliers make up a small part of the entire electronics industry. In this group of industry segments alone, the estimated cost impact of due diligence is estimated at roughly 279 million dollars in the first year, with ongoing annual costs expected to be around 165 million dollars.

In addition to due diligence, a number of other costs were identified by survey respondents. Many respondents anticipated significant additional labor costs either through temporary staff, reassignment of existing staff, or hiring of new staff. Anticipated costs associated with direct labor costs ranged from 20,000 to 300,000 dollars. In addition to direct labor costs, additional training costs of 5,000 to 150,000 dollars were anticipated for the first year of the rule. Many companies anticipated the need for legal review and assistance, with estimated costs ranging from 15,000 to 100,000 dollars. A number of respondents identified the need to significantly augment or modify enterprise resource planning systems and other computer planning and tracking systems used in production planning and management. Anticipated costs for information technology modifications ranged from 12,500 to 750,000 dollars. Supplier verification and auditing was a frequently cited anticipated cost, with a number of respondents expecting to audit over 100 direct suppliers. Estimated supplier audit costs ranged from 25,000 to 250,000 dollars. In addition to direct supplier audits, survey respondents estimated direct costs of 10,000 to 100,000 for the third party due diligence audits required under the law.

Anticipated compliance burdens are, in a large part, related to the very short timeframes provided under the proposed regulations in combination with specific measures discussed in the previous section of these comments. IPC recommends that SEC give serious consideration to the mandate of the Paperwork Reduction Act<sup>4</sup> and carefully examine the proposed regulations for opportunities to reduce the burdens imposed on U.S. issuers and their supply chains.

## **V. Conclusion**

IPC is committed to addressing the traceability, sourcing and transparency of conflict minerals and is actively working with many of its members and other industry associations on both a domestic and international level to address the issue. IPC member companies are participating in a variety of sector specific and other international initiatives to develop industry wide protocols for removing conflict associated conflict minerals from supply chains. Given the broad potential impact of these regulations on the day-to-day operations of manufacturing companies throughout the United States, and the impacts on legitimate trade in the DRC, we urge the SEC to exercise caution when implementing regulations under Section 1502 of the Dodd-Frank Act. Specifically, we encourage the SEC to allow maximum time and flexibility for industry to implement these potentially far-reaching rules. We encourage the SEC to allow companies the flexibility to develop appropriate, supply chain based due diligence processes. We also encourage the SEC to develop appropriate exemptions for recycled materials and materials already in the manufacturing supply chain at the time these regulations are implemented. Finally, we ask the SEC to conduct a thorough economic analysis of the draft regulations to ensure that they have implemented the underlying goals of the legislation without imposing undue burden on manufacturers and the American economy.

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<sup>4</sup> 44 U.S.C 3501 et seq

## **APPENDIX A**

### **IPC Burden Survey**



*Association Connecting Electronics Industries*



# **Results of an IPC Survey on the Impact of U.S. Conflict Minerals Reporting Requirements**

**February 2011**

**Produced by the Market Research Service of IPC**

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## INTRODUCTION

### About the Survey

During February 2011, IPC surveyed 3,839 members in the electronic interconnect supply chain. The industry segments represented include electronics manufacturing services (EMS) companies, printed circuit boards (PCB) fabricators, materials suppliers and equipment suppliers. Sixty-seven responses were received. After eliminating multiple responses from the same companies and invalid responses, a total of 60 companies participated in the survey.

### Intent

Although these companies make up a representative sample of the U.S. electronic interconnect supply chain, the intent of the survey was not to produce statistical significant data. The issue of conflict minerals is so new, and there are so many unknowns, that most respondents can only speculate about the impact of the conflict minerals requirements. This survey was intended to gauge, roughly, the magnitude of the impact on American electronics manufacturers, and to bring their insights and issues into the discussions about the implementation of this new legislation.

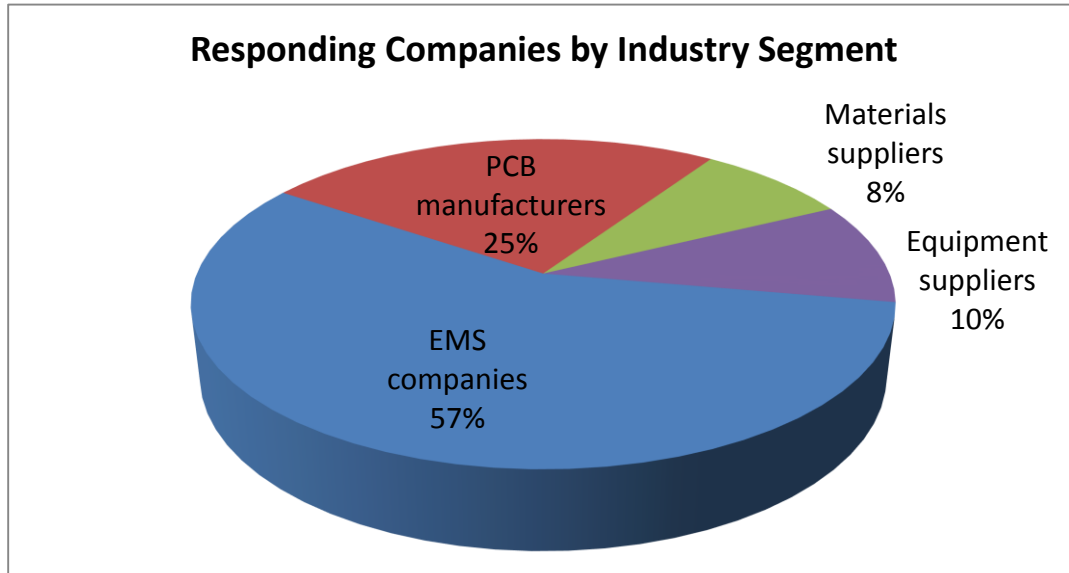
### Using the Data

In most of the tabulations, both means (averages) and medians are reported. Where there is a large variance between means and medians, this indicates a large spread of data points, which may include some exceptionally high or low figures. These outliers tend to skew the means. Therefore, it is suggested that more attention be paid to the median numbers, as they reflect the true middle of the range of answers.

## DEMOGRAPHICS

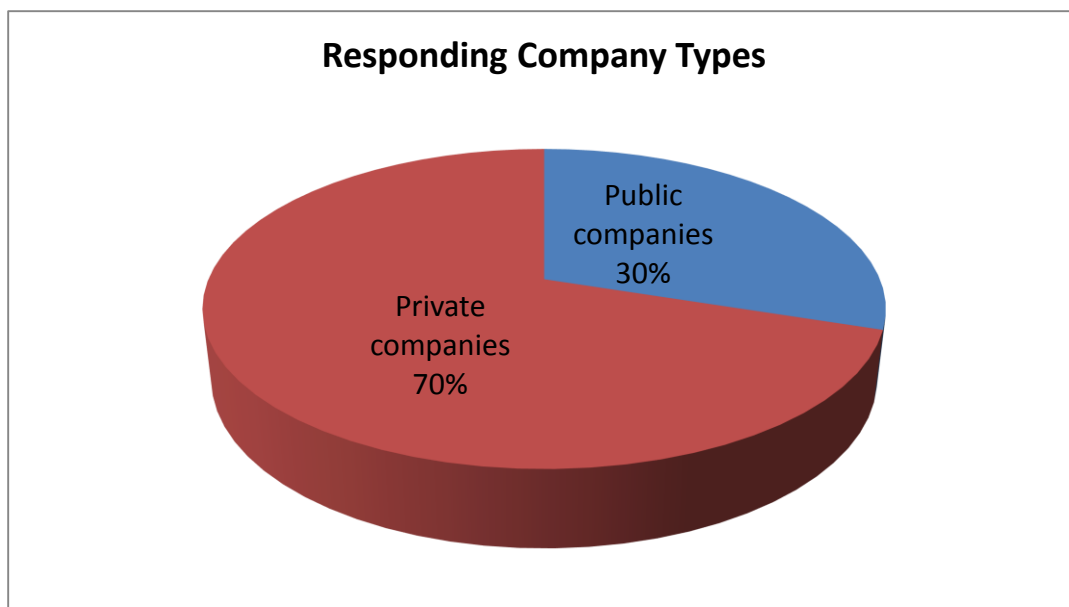
### Industry Representation

EMS companies are the majority of respondents at 57 percent, followed by PCB manufacturers with one-quarter of the responses. Materials and equipment suppliers make up the rest of the survey sample.



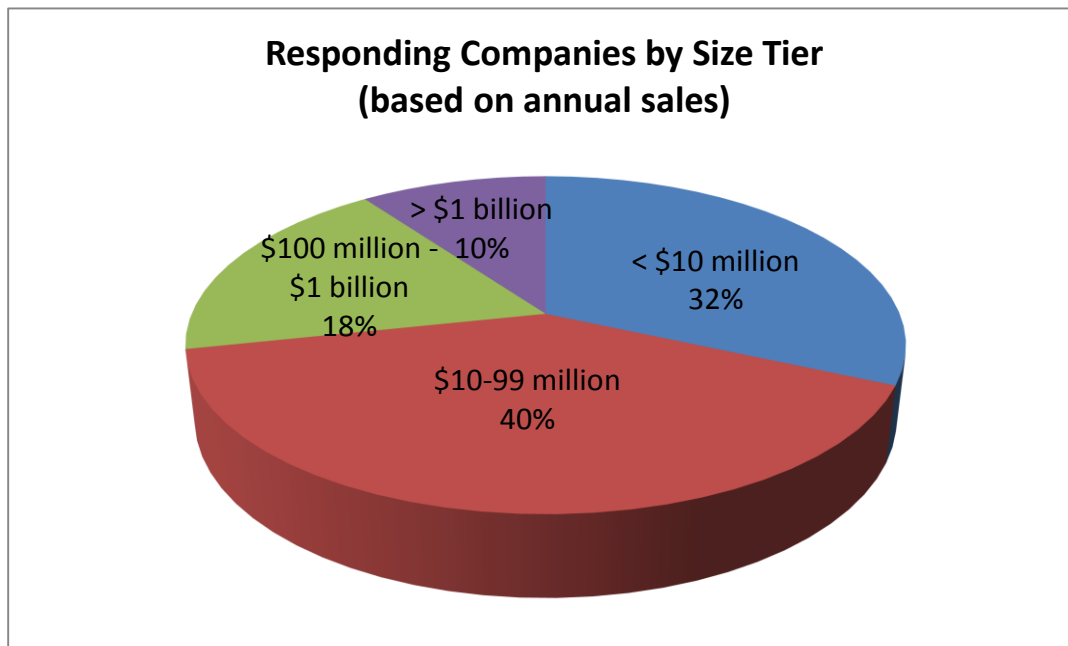
### Private versus Public Companies

Seventy percent of the responding companies are privately held. They anticipate feeling the impact of the requirements as well as publicly traded companies, which represent 30 percent of the sample.



### Company Representation by Size

The survey sample was balanced in terms of representation by companies of various sizes, based on annual sales. Forty percent are medium-sized companies (in the \$10 million to \$99 million range), nearly one-third are small companies (under \$10 million in sales). Ten percent are large companies (more than \$1 billion in sales).



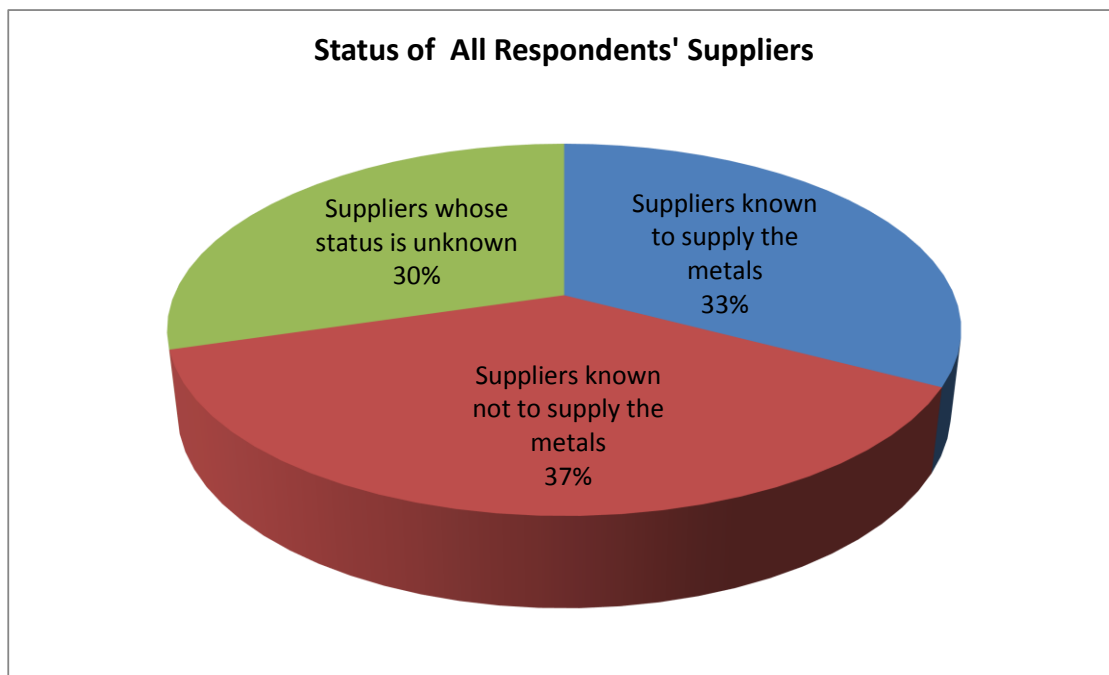
The respondents' company sizes vary widely, as shown in the following table. The median numbers provide the most meaningful view of the middle of the ranges.

Worldwide Company Size Measures	Low	Median	High
Total number of employees	2	181	190,000
Total revenue for last fiscal year	\$180,000	\$24,550,000	\$24,100,000,000

## INDUSTRY SUPPLIERS

### Metals Awareness Across the Industry

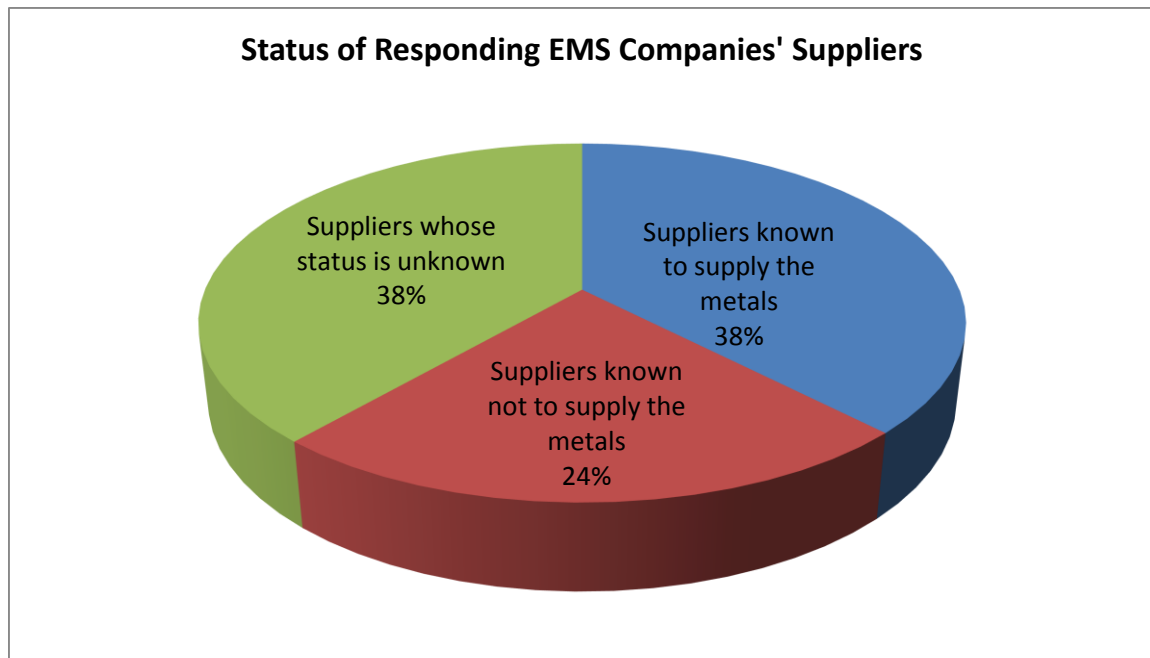
Taking the sum of all respondents' suppliers that are known to supply the metals, all who are known not to supply the metals, and all whose status is unknown, shows an aggregate industry view. Altogether, one-third of the respondents' suppliers provide products containing the metals of concern. Nearly one-third of the industry's suppliers have an unknown status as regards metal content in the products they supply.



There are no significant differences between public and private companies as regards awareness of the metals in their suppliers' products. Among companies in different size tiers, there is no correlation in supplier awareness. Even the largest companies report that the status of 39 percent of their suppliers is unknown.

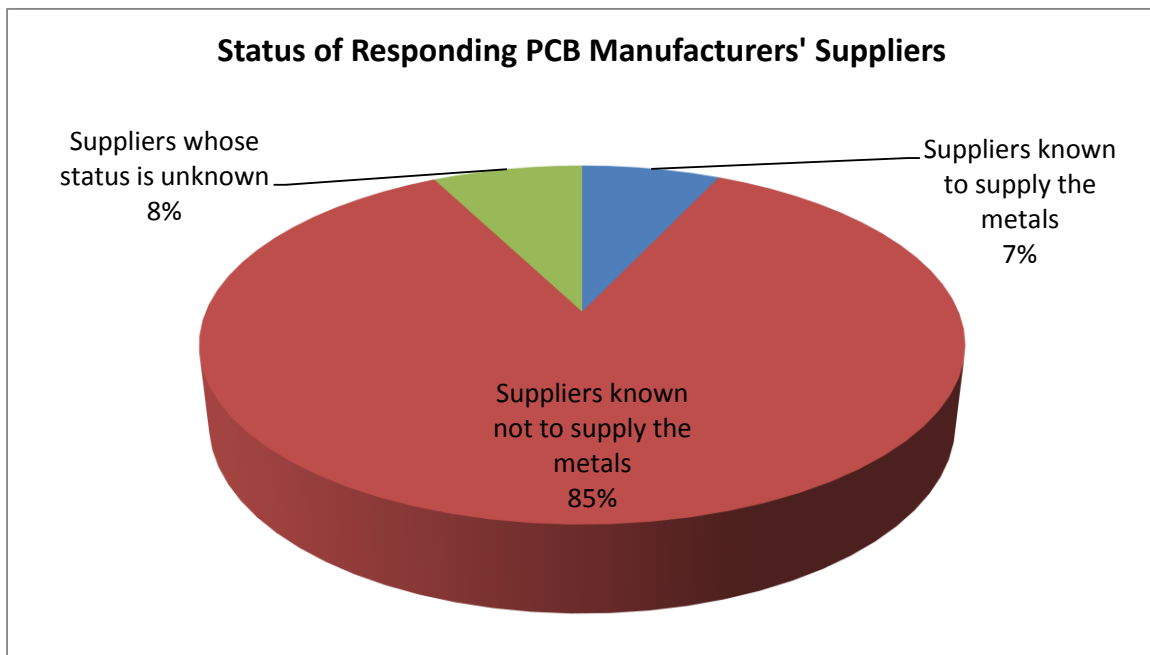
### EMS Industry Suppliers

Nearly three-quarters of the EMS industry's suppliers are known to supply the metals of concern, or their status is unknown.



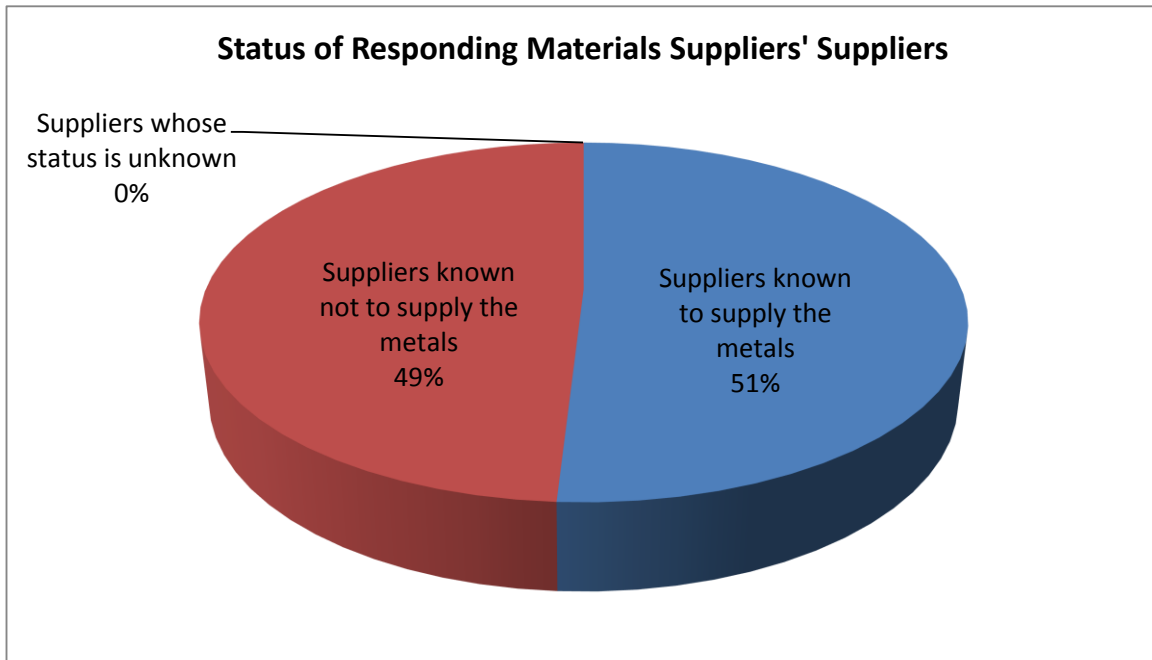
### PCB Industry Suppliers

PCB manufacturers believe that 85 percent of their suppliers' products do not contain the metals.



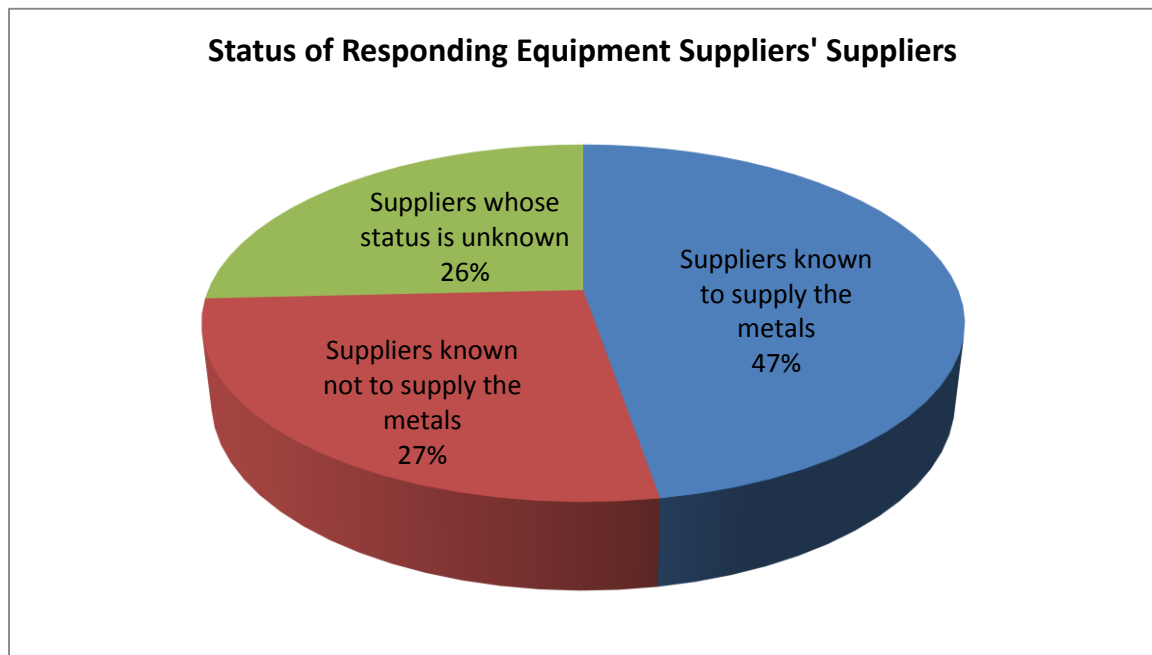
### Materials Industry Suppliers

All materials suppliers surveyed know the status of all of their suppliers and about half are known to supply products containing the metals.



### Equipment Industry Suppliers

Nearly half of the equipment industry's suppliers are known to supply products containing the metals, but more than one-quarter are unknown in this regard.





## IMPACT OF DUE DILIGENCE

### Definition of Due Diligence for Conflict Minerals

Due diligence was defined in the survey as including the following activities: investigation through independent audits, risk assessments, restructuring contracts, conducting inquiries of suppliers, and identifying all parties in the supply chain. It may require the implementation of a tracking system similar to one used for the European Union Restriction on Hazardous Substances (RoHS) Directive.)

### Impact on the Typical Company

The typical company (with estimates in the median) expects more than 1,300 staff hours to be spent on due diligence for conflict minerals in the first year that the requirements are implemented. The impact in the following year, and presumably in most succeeding years, is expected to be smaller but still significant, requiring more than 500 staff hours per year.

ALL RESPONDENTS	First Year			Following Year		
Estimated Staff Hours	Total Hours	Median	Average	Total Hours	Median	Average
Identify the products containing tin, tungsten, tantalum or gold that are supplied to your company	57,309	180	1,023	25,038	100	455
Identify the country of origin for all supplied tin, tungsten, tantalum or gold	78,793	350	1,459	34,999	120	660
Identify the mines that supplied the tin, tungsten, tantalum or gold from the DRC or adjacent states	92,406	475	1,711	36,653	120	692
Gather data, assemble and file the conflict minerals report	129,364	200	2,441	34,465	100	663
<b>TOTAL HOURS ESTIMATED FOR COMPLIANCE</b>	<b>357,872</b>	<b>1,301</b>	<b>6,391</b>	<b>131,155</b>	<b>510</b>	<b>2,342</b>

### Expectations by Industry Segment

EMS companies anticipate a significantly greater first-year impact than other industry segments. The typical EMS company, as defined by the median figures, expects to spend more than 2,200 staff hours in the first year and 850 in the following year. Materials suppliers estimate the least impact with, typically 80 hours the first year and 40 the next year.

ALL RESPONDENTS	First Year			Following Year		
Total Hours Estimated for Compliance	Total Hours	Median	Average	Total Hours	Median	Average
EMS Companies	290,259	2,280	8,796	81,034	850	2,456
PCB Manufacturers	44,661	270	3,722	32,462	133	2,705
Materials Suppliers	1,770	80	354	952	40	190
Equipment Suppliers	21,182	1,301	3,530	16,707	446	2,785

## Estimates of Industry-Wide Impact

An estimation model was developed using the survey data and estimates of the size of each industry segment to extrapolate the total impact of conflict minerals due diligence on each industry segment. Calculating the cost included an assumption that average staff time would be valued at \$50 per hour.

EMS COMPANIES	First Year	Following Year
Extrapolation of Hours Required for the Industry	2,020,427	564,059
Estimate of Cost to the Industry (based on \$50/hour)	\$101,021,369	\$28,202,969

PCB MANUFACTURERS	First Year	Following Year
Extrapolation of Hours Required for the Industry	1,214,913	883,064
Estimate of Cost to the Industry (based on \$50/hour)	\$60,745,655	\$44,153,186

MATERIALS SUPPLIERS	First Year	Following Year
Extrapolation of Hours Required for the Industry	5,986	3,219
Estimate of Cost to the Industry (based on \$50/hour)	\$299,278	\$160,967

EQUIPMENT SUPPLIERS	First Year	Following Year
Extrapolation of Hours Required for the Industry	2,333,931	1,840,855
Estimate of Cost to the Industry (based on \$50/hour)	\$116,696,546	\$92,042,734

The interconnection industry suppliers make up a small part of the entire electronics industry. In this group of industry segments alone, the estimated cost impact of due diligence is estimated at roughly \$279 million in the first year of implementation. The ongoing annual cost of due diligence is expected to be around \$165 million.

THE INTERCONNECT SUPPLY CHAIN	First Year	Following Year
Extrapolation of Hours Required for the Industry	5,575,257	3,291,197
Estimate of Cost to the Industry (based on \$50/hour)	\$278,762,848	\$164,559,857

## OTHER COSTS

### Overview of Other Costs

Respondents were asked if they anticipated any hidden cost in connection with conflict minerals reporting. A large number of respondents estimated hidden cost associated with training, legal fees, suppliers audits, travel expenses, information technology (IT) expenses, hiring additional staff, and third party audits. The additional costs estimated varied widely from \$2,500 to more than \$2 million. The verbatim comments are grouped by industry segment below

### EMS Industry Estimates and Comments

- Unknown
- Clearly this would require additional staff. We are a very small company.
- \$40,000 to join EICC GeSi working group - \$12,000 to actively participate in EICC group; \$200,000 to purchase smelter and broker audits; \$25,000 for 3rd party audit of our company.
- I expect my cost of goods to increase, as all my vendors must track the source of these materials and will pass their costs on to me. If I then increase my price to customers, I am at a disadvantage to my international competitors. I will lose sales.
- Software changes to help track and identify affected materials by part number: est \$25,000-\$50,000.
- Additional custom programming and modifications to our ERP software to automate portions of this process will cost in excess of \$50K to implement with a savings of only 10% in labor anticipated.
- Fully complying will be a major effort for us. We'd need at least one person to do this full time for about 1 year for starters. In addition, management and staff would have to spend a lot of time training the individual and others involved with what to do. It would be a major distraction from maintaining and building the business. The resources to comply with conflict minerals reporting will come from efforts to build the business by finding new customers and filling their needs. We have no other source of resources as we must remain profitable. Also, to get much of this info I think we would have to visit and audit about 50 offshore suppliers. That means travel expenses of \$2,000/supplier. That's as much money as the value of product we purchase from many of them. So, I think doing this will reduce our growth to zero, maybe make it negative.
- \$5,000 training, \$15,000 legal, \$25,000 supplier audits (travel expense), \$170,000 additional staff, \$55,000 IT Expense (one time), \$5,500 IT annual maintenance expense.
- All of the costs listed above would be included. It is impossible to estimate a value.
- Unknown at this time with the limited information provided and unknown requirements. There will be requirements for traceability created for every component purchased, who it was purchased from, where did they get it, etc. This could more than triple the hours estimated above, and it will also call for our firm to create a database to track all of this information and a person to maintain/update it on a daily basis.
- There are always unforeseen costs as governmental agencies tighten up regulations and rules. This may also have tax consequences based on year-end inventories. U.S. government did the same on the old Freon years ago. I worked with NASA then, one of the few agencies still allowed its use.
- No additional cost.
- Incalculable. This would be a nightmare of epic proportions. We would simply close up the shop and do something else.
- This will require hiring professional staff whose job is to solely acquire such information and whose job would add no value to our sales, only burden, making us less attractive to potential customers.

- Inspection equipment - X-Ray fluorescence - \$70,000.
- I would estimate indirect IT, outside training, legal, accounting, auditing, and travel costs to be \$200,000 to \$350,000. This would be in addition to the direct staff we would have to put on the project of compliance to work on it full time.
- Travel, staffing, supervision, training, IT systems development and support, legal/compliance review, ongoing audit/assessment for compliance, etc.
- Add \$300,000 in costs due to additional labor required.
- 1) Development of internal tracking systems for CM containing materials or purchased components (250 MH @ \$50/hr = \$12.5K). 2) Implementation and personnel training re: new procurement procedures (200 employees at 1 hour each @ \$50/hr = \$10K). 3) Part-time administrative support staff for data collection & compilation (3000 MH @ \$25/hr = \$75,000). 4) 3rd party audits still TBD, but with 100+ global manufacturing sites and estimates of \$20K/site, the stakes are very high. 5) If discovery of CM in supply chain, the total costs (MH, travel, price differentials) of developing, qualifying and auditing new non-CM sources will average an estimated \$10K/supplier and considering 1% of company supply chain uses CMs, you have  $(10,000 * 1\%) * \$10,000 = \$1M$
- Third party audit - verification \$20,000, IT systems - \$300,000, legal consultation - \$25,000, staff - \$50,000, travel (supplier audits) - \$50,000. Alternate est. = \$500k.
- IT system cost: \$20,000; training: \$150,000 (to train 100 employees each on 75 sites).

#### PCB Manufacturers' Estimates and Comments

- Staff training, legal and accounting fees.
- \$50,000 for outside help for investigations.
- It would appear that this would drive 100% on site audits of all suppliers to verify the origin and accuracy of data. This can drive significant travel expenses and staff hours.
- Additional cost (est.) Year 1 \$50,000 Additional cost (est.) Year 2+ \$25,000.
- There are many hidden costs associated with this unfunded mandate. Conservatively it could cost our division north of \$100K.
- Internal education to upper management that this particular regulation, though annoying, will not immensely impact us since we are not a publically traded company - although we will need to tell other companies the regulation does not apply to us = 20 hours.
- \$10,000 USD for independent 3rd party auditor to review due diligence reports.
- There may be a need for additional staff, both supply chain and legal, to get the company program started to ensure full compliance. There will certainly be third party audits required which will be expensive. We are estimating an additional cost of \$150-200K to reach full compliance. After that the cost will diminish, but audits alone will probably maintain at \$50K.
- I have no idea what costs could be incurred. If this is implemented I would simply close my doors!!
- We just have 2 suppliers of metals.

#### Materials Suppliers' Estimates and Comments

- Small amount of time (to gather samples and maintain reports) and expense involved for testing our products for these substances. Possibly \$2,000 - 3,000 for testing.
- If we chose to avoid all Congo tin, our cost of metals could go up 10% (\$30,000,000).
- We will probably need to join industry consortia (such as EICC) to gain the benefits of the work of larger companies. This will cost our company an additional \$40,000 the first year, and \$35,000 per year afterwards. We will have to add additional staff to help cope with this requirement, but those costs are embedded in the hours above.

### **Equipment Suppliers' Estimates and Comments**

- There would have to be software enhancement to several different programs to track materials and components containing minerals. IT Systems - 750K; staff training - 100K; legal & accounting fees - 100K; 3rd party audits - 100K.
- 3rd party audit of our company: \$10,000; 3rd party audit of suppliers: \$0; legal guidance: \$10,000; consultant: \$20,000; supply chain corrective action: 500 man-hours; staff training, committee meetings, industry guidance review: 300 man-hours; legal review, SEC statement preparation: 100 man-hours; public disclosure: 200 man-hours.

## ADDITIONAL COMMENTS

### EMS Companies

- The cost will be enormous.
- My estimates on time assumes it is possible for my PCB manufacturer to track which mine the gold in the PCB came from. The times will double or triple if this is not easily achievable.
- Almost all electronic components contain tin, many have tantalum, gold is on most connectors and tungsten is in virtually all incandescent light bulbs. The volumes can be quite small and virtually impossible to trace with any reasonable accuracy. Conflict minerals tracking is entirely the wrong way to solve the political problems. Democrats just don't get it, and they are killing industry with their collective ineptitude.
- The effort required is highly uncertain and will depend on the willingness of our suppliers to provide info. Since many are small and off shore, we expect major problems in getting them to comply. Why should they? Some of our key offshore suppliers are reluctant to sell to us because we are small as well as for other more complex reasons. If we required them to provide this info, I think they will simply refuse to do so. Since we know of no source that will comply with our small volume needs, we will be unable to comply no matter how much effort we put in. I'm unclear where that leaves the situation. In the extreme we could be forced out of business. Lastly, I think the accuracy of the data that results will be low. Suppliers will not say their materials and/or minerals come from the "bad" place. Firms like us will be forced to audit them all over the world and demand access to their receiving documents during the audits to ensure they are giving us accurate info. As I think through this requirement, I see no way to comply with any accuracy for an acceptable cost.
- This will be impossible to fully and accurately comply with.
- The components we are talking about checking are < \$200K per year. The cost of complying with this is bound to drive the overall costs up significantly. Trying to block a few percent of the supply chain at the costs expected is absurd.
- The scope provided was very broad, and leaves a lot to be imagined. It would be good to narrow the focus and then work on one at a time.
- Less government = more (equal) competition/more winners
- This is a real guess. I assume it is a lot more extensive than TRI.
- This is a very large task for us and we would not be able to do this by ourselves. We would have to engage with our supply base to help with this and I would expect that our supply base would spend as much time if not more than what we spend.
- Don't people in Washington have enough to do besides bother us?
- Sigmatron is in the electronics business and has over ~35,000 unique raw component parts that it purchases from various suppliers to manufacture electronic assemblies for its many customers. The vast majority of these parts would have one or more of these metals in them. Compliance with this reporting requirement would be a colossal financial burden on the company and make us non-competitive in our market segment.
- Still awaiting full definition of how this will be implemented and verified to determine actual costs to our organization.
- If this goes in to law, the burden needs to fall on the mines of the said conflict minerals as to how much they mine & where it ends up in the market place. Can leverage existing component engineering databases and use BOMcheck with suppliers, however not all suppliers are participating in BOMcheck. It will be very difficult to get suppliers to cooperate, especially those outside the US.

- The regulations MUST have a threshold criteria integrated so that we're not chasing down alloy formulations containing trace, but requisite amounts of CMs (tin in Cu alloys, W in tooling or SS). Additionally, the criteria to include materials used in the production of, but not included in finished products is too much too soon. Undoubtedly, the intent is to restrict the purchase of CM, whether used in production processes or contained in saleable product, however US industry just is not ready, and I'll venture "yet capable" to audit its consumable production materials/chemicals without considerably incurred detrimental costs that limit its competitiveness in a global economy which is not requiring CM tracking and disclosure
- Hours are in man-hours for analysis, surveys, validation.
- We cannot estimate the cost needed for such a project. It would depend on how easily our suppliers can provide this data and in most cases, there are multiple parties in one part's supply chain to validate, i.e. we have to ask our suppliers to get data from their suppliers.

### PCB Manufacturers

- We are very interested in working and collaborating with other organizations to find out what they are doing.
- Gold tracking with one of our suppliers is next to impossible as the bulk of their product comes from recycled gold. Also, the part that is not included here is the inflated cost of the materials due to a smaller vendor base that we can purchase from. Unless this legislative requirement is enforced on all companies worldwide, the legislation will only drive more manufacturing offshore by increasing the cost of raw materials and making U.S. based companies less competitive. Metal prices on ethically mined metals will go up. The responses to this survey are only for our U.S. based divisions. Also, the actual percentage of our metal suppliers is 0.24%, but this survey only allowed increments of one to be entered.
- These regulations would put me out of business.
- As a PCB manufacturer, we would be in the middle of the supply chain, with our customers requesting information from us and we in turn requesting the information from our suppliers. This information would then passed back up the chain to our customer. I am not sure how to estimate time, maybe 2 hours per request.
- Sounds unconstitutional to me.

### Materials Suppliers

- Remark: for item 7, the hour is working day. Per feedback from supplier, they purchased the metals are not from DRC. For item 1, Pulse is component manufacturer.
- We are NOT publicly traded nor do our products (electrical laminates) contain any of these conflict metals. I have personally tried to inform customers in Asia about these facts - in face to face meetings. They DO NOT understand, nor will they accept that the rule does not apply to our company because we are not publicly traded. Some of them have accepted a position letter from us stating that this does not apply to us, however, what they are really accepting is that we state our products do not contain these minerals. Some Asian companies are demanding that we test our products for these minerals. As with most regulation in China, this is a blanket disclosure, even if the regulation does not apply. In this case, privately held companies are not exempt from some cost in Asia due to this measure.
- The largest problem with this law is that it is going to cause the very harm that it was ostensibly enacted to prevent. All of my customers are telling me that they do not want any materials from the DRC or adjoining countries, REGARDLESS of whether it is from a militarized mine or not. This law is going to absolutely crash the minerals economy in the Central Africa region.

## Equipment Suppliers

- We are moving our manufacturing offshore due to this and other onerous government regulations.
- All estimates are at 25% confidence level and based on other similar efforts undertaken within the organization. Obviously, conflict minerals is of different scope. Estimates above do not include supplier related efforts (contract updates, training, awareness etc).
- Very confusing and difficult compliance task, perhaps impossible to complete in one year. Of course, you could simply embargo the DRC and adjoining countries, thereby plunging them into economic, social, and political chaos, with the predictable result of more human atrocity than ever, but you would have portrayed yourself as compliant, thus satisfying both the government and advocacy groups. The law of unintended consequences will affect attempts at quick fixes. Still, well-intentioned, nuanced, and socially responsible effort is obviously needed. It may simply take more time than a year to solve problems decades in the making. At the end of all this frenzied activity, the integrity systems can be easily corrupted, resulting in no net gain. A simple boycott of the DRC region would drive up metal costs and deprive millions of a livelihood, possibly plunging the area into starvation and further government breakdown. Government breakdown is the fundamental problem here. Like water flowing downhill, economic activity will continue inside or outside the law, and only the rule of law can channel the flow. An annual traceability exercise cannot.



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## **APPENDIX B**

**IPC-Association Connecting Electronics Industries, Comments on SEC Regulatory  
Initiatives Under the Dodd-Frank Act Title XV: Miscellaneous Provisions- Section 1502  
Conflict Minerals (P.L. 111-203), November 22, 2010**

**Comments on SEC Regulatory Initiatives Under the  
Dodd-Frank Act Title XV: Miscellaneous Provisions- Section 1502 Conflict  
Minerals (P.L. 111-203)**

**IPC-Association Connecting Electronics Industries**

**November 22, 2010**

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## **I. Executive Summary**

IPC – Association Connecting Electronics Industries is writing to articulate issues and concerns that we believe should be addressed by the Security and Exchange Commission (SEC) during the upcoming rule-making process mandated under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (hereinafter financial reform bill).

IPC, a U.S. headquartered global trade association, represents all facets of the electronic interconnect industry, including design, printed board manufacturing and electronics assembly. Printed boards and electronic assemblies are used in a variety of electronic devices that include computers, cell phones, pacemakers, and sophisticated missile defense systems. IPC has over 2,700 member companies. As a member-driven organization and leading source for industry standards, training, market research and public policy advocacy, IPC supports programs to meet the needs of an estimated \$1.7 trillion global electronics industry.

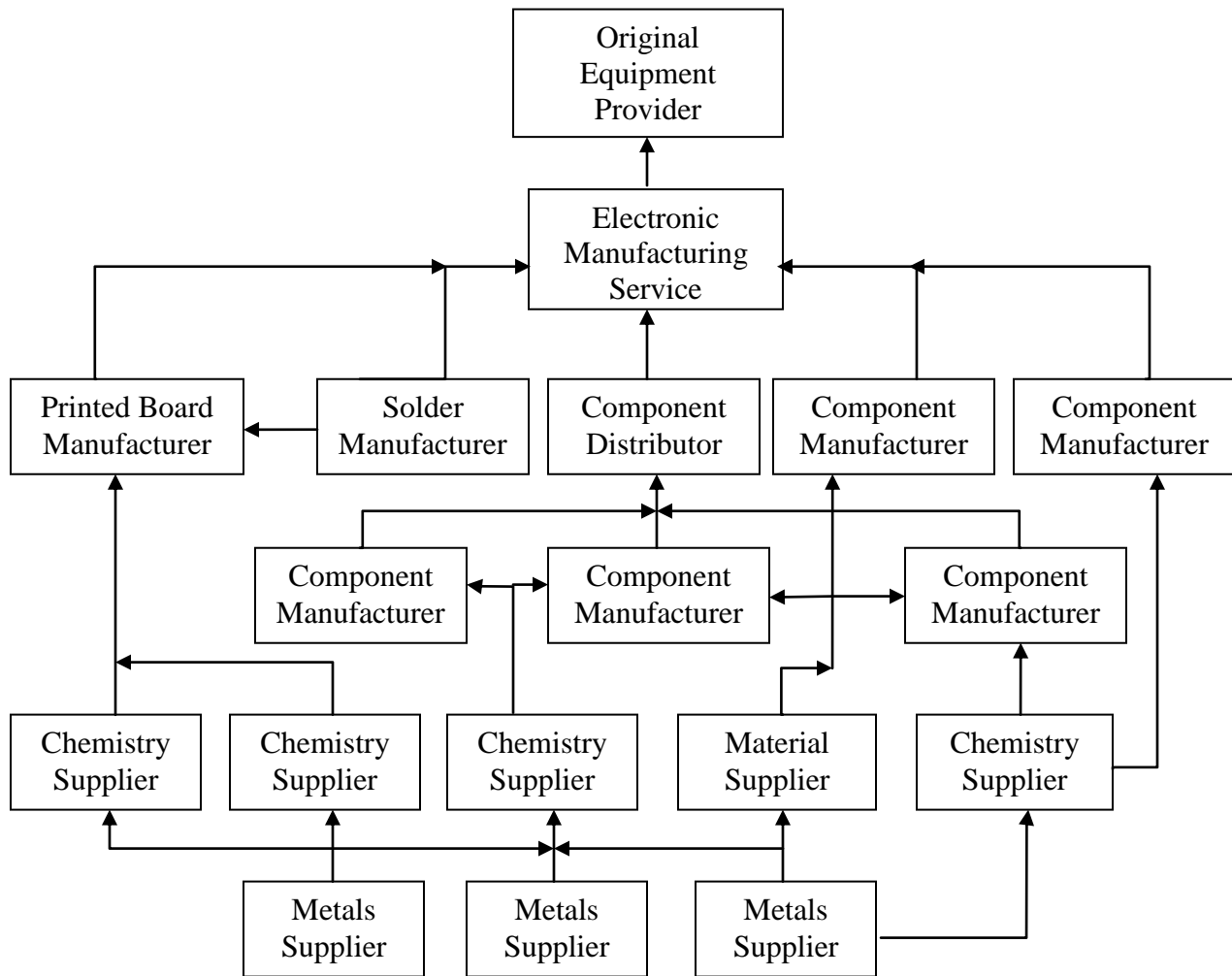
IPC supports the underlying goal of Section 1502, which is to prevent the atrocities occurring in the Congo. We understand that those perpetrating the atrocities are obtaining funding from the minerals trade and that the aim of Section 1502 is to cut off this funding. The electronics industry, including IPC members, is actively involved in a number of initiatives that seek to improve control and transparency in the mining and refinement of conflict minerals.

IPC encourages the SEC to implement the requirements of Section 1502 in a manner that supports the goals of the statute without unduly burdening U.S. manufacturing industries or causing unnecessary disruptions of the minerals trade, which is vital to the livelihood of the people of the Democratic Republic of Congo (DRC). We are concerned about the potential significant and unintended effects that the implementation of the regulations may have. In order to minimize these effects, IPC recommends that the SEC allow companies the flexibility to develop appropriate due diligence measures, recognize ongoing efforts to improve the transparency of the supply chain, address the need to phase in requirements, and provide the necessary time to implement these measures. It is important that the regulations acknowledge the realities of the situation on the ground in the DRC, the complexities of the international minerals trade, and the broad and diverse global electronics supply chain.

## **II. Description of Industry and Supply Chains**

Supply chains in the electronics industry are extremely complex. At each step of the chain there are multiple suppliers, which are often located around the globe. *Figure 1* provides a very simple version of the global electronics supply chain. Most printed board assemblies contain dozens of components, often from several or more suppliers. Some complex printed board assemblies contain hundreds of components.

**Figure 1**  
***Simplified Electronics Supply Chain***



DOWNSTREAM SUPPLY CHAIN

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UPSTREAM SUPPLY CHAIN  
Smelter, Mines, Comptoirs, Negotiants etc.

At the most downstream position in the supply chain is the Original Equipment Manufacturer (OEM). This is the company responsible for specifying, marketing, and distributing the product. The OEM's name is on the product. Some OEMs assemble or manufacture the final product internally, but the majority of OEMs outsource manufacturing to an Electronics Manufacturing Services (EMS) provider or contract manufacturer.

The EMS firm is often responsible for all manufacturing of the product sold by the OEM. In some cases, the OEM is responsible for subassembly design, for example a disc drive or memory card in a laptop computer, but in many cases, the OEM specifies all parts in the product through an Approved Supplier List (ASL). One of the key manufacturing steps carried out by the EMS is to attach *components* to *printed boards* with *solder*. Although each of these italicized items contains conflict minerals, the EMS typically does not control selection of suppliers or materials sources. The U.S. EMS industry has annual revenues of approximately \$43 billion.

Component manufacturers manufacture a broad variety of electronic components including *integrated circuits (chips)*, *connectors*, *capacitors*, *batteries*, etc. Many of these products contain one or more conflict minerals. EMS firms may obtain components directly from component manufacturers or from component distributors.

Printed Board (PB) manufacturers manufacture bare *printed boards*. The U.S. PB industry is approximately a \$3.1 billion per year industry. Many *printed boards* are finished with tin surface finishes. A number of printed boards also contain gold plating for specific electrical connections.

Solder manufacturers formulate and sell bar and paste *solder* to EMS firms for use in soldering *components* to *printed boards*. Almost all *solders* today contain significant levels of tin.

Chemical suppliers formulate and sell chemistry for gold and tin plating of *printed boards*.

Metals suppliers provide tin, gold, tantalum, and tungsten to chemical suppliers, component manufacturers and solder manufacturers.

While many members of the supply chain are large companies, some are very small companies with little leverage over their suppliers, let alone their suppliers' suppliers.

### **III. Establishing a Minerals Chain of Custody is Nearly Impossible for an Electronics Manufacturer**

Due to the complexity of the supply chain, there are major challenges for downstream users attempting to establish a chain of custody from the mine to the product: 1) tracing conflict minerals from finished products back through complicated supply chains to the smelter, 2) tracing ores from the smelter back to the mines of origin; and 3) identifying which mines are conflict mines—that is, mines whose output is controlled by or taxed by warring factions.

## **M. Producers of Products Containing Conflict Minerals Do Not Have Visibility to the Entire Supply Chain**

The assumption that downstream users are able to trace the metals in their products back to the mine assumes a supply chain is a transparent, linear process. In fact, it is a complex, multi-layered network of trading companies and suppliers where products are sourced and consolidated from multiple countries and multiple manufacturers.

Tracing metals from the smelter to mines is complicated by several factors. First and foremost is the nature of the metals themselves. While minerals are mined from the ground, it is metals refined from these minerals that are used in products built by companies subject to the reporting requirements. The smelting process, which converts minerals to useable metals through alteration of physical properties, combines minerals from many sources, making continuance of a chain of custody for original mineral lots impossible.

Typically, companies who purchase products that may contain conflict metals only have direct contact with the first tier supplier or company immediately upstream from themselves. In the case of OEMs utilizing an ASL, there may be selection of second tier suppliers and contact with these suppliers. However, the vast majority of upstream companies in the supply chain are often unknown or unavailable to the ultimate downstream user.

The complexity and length of the supply chain represents a real challenge when attempting to trace specific metals and the minerals from which they are refined. Although one might expect that a purchaser of products would know what is in the products they purchase, that is often far from the truth, especially in electronics manufacturing. In addition to the complexity of the supply chain, a desire to protect intellectual property often contributes to the lack of knowledge regarding product material content. Purchasers typically do not have the necessary leverage to force a supplier to disclose material content. This is particularly true for small and medium manufacturers (SMMs) in the supply chain, which typically have little leverage over their suppliers. Companies throughout the supply chain face significant challenges when trying to trace the conflict metals in their products.

Companies' attempts to gather data regarding the use of the six substances restricted under the European Union Restriction on Hazardous Substances (RoHS) Directive illuminates the difficulties involved in working with highly complex supply chains. When RoHS was first implemented, many electronics OEMs found themselves unable to assess whether their products contained the six substances restricted under RoHS. It took several years for the supply chain to develop knowledge and information regarding the presence of just six substances. Entire computer programs and databases needed to be developed to allow companies to efficiently query and store compliance data from hundreds of suppliers. The difficulty in gathering information regarding the use of conflict metals is expected to be similar.



## **N. Identification of Conflict-Free Conflict Minerals is Nearly Impossible under Current Conditions**

Without improved governance and tracking from the mine to the smelter, it is nearly impossible for downstream users to certify with any level of credibility that their products are conflict free. The problems associated with minerals originate significantly upstream from the companies that are subject to the new legislation. Before the actions of downstream companies can have any effect, more must be done on the ground to: 1) accurately identify good versus bad mines; 2) implement a stronger system of governance to regulate the mineral trade; and 3) work with refiners and smelters to create a process for validating the source of minerals to downstream users. A study by the RESOLVE group found that,

“While expressing a desire to source responsibly, GeSI and EICC companies have found three major challenges for transparency down to the mine level: their supply chains are not sufficiently transparent to this level; their tracking capacity and accountability mechanisms to this level are missing or limited; and the on-the-ground capacity (in conflict regions) to differentiate sources and ensure independence from operations that may support warring groups does not exist. Metals from multiple mines and other sources are typically undifferentiated and mixed at various points in the supply chain, including by négociants, comptoirs, traders, and smelters.”

IPC members are participating in several multi-stakeholder efforts to address and improve transparency in the trade and manufacture of conflict minerals from the DRC and adjoining countries. These efforts are described in Section IV. We encourage the SEC to review the efforts of these groups and recognize their contribution to addressing the underlying goals of Section 1502.

## **IV. Ongoing Initiatives to Create Supply Chain Transparency**

IPC members are committed to addressing the issues associated with conflict minerals and are actively working on both a domestic and international level to craft solutions. IPC member companies are participating in a variety of initiatives to develop industry wide protocols for removing conflict minerals from supply chains. These initiatives are systematically evaluating supply chains to determine the most effective measures to combat trade in conflict minerals.

Through these efforts, many obstacles have been identified and we are working together with non-governmental organizations (NGOs), international organizations, and other groups to overcome them. These efforts, though, highlight the difficulty in crafting a solution and further indicate the need for the SEC to take a measured approach with its rule making. Moreover, while it is important to look to these initiatives for guidance, until there is confidence that those processes are workable, the SEC should not create obligations or set standards for companies based on the industry or international organization initiatives. A phased approach should be considered until the activity currently under exploration creates accepted systems or processes. The RESOLVE group has also pointed out the difficulty in establishing a chain of custody stating,

“Currently, large-scale smelting facilities typically mingle materials from multiple sources as they are processed. Tracing a metal in a given product is also complex because the material sources vary, and can vary over the life of the product. A given product will often have several suppliers for a particular component, and thus tracing or tracking one supply chain is a snapshot unlikely to remain static or represent a complete supply chain picture.”<sup>5</sup>

IPC urges the SEC to be cognizant of these difficulties and to provide sufficient time for the industry to build necessary compliance systems.

## **A. Ongoing Industry-Lead Efforts to Improve Supply Chain Visibility**

### **1. ITRI Tin Supply Chain Initiative (iTSCi) Process**

ITRI, a global organization representing the tin industry, has been working since early 2009 on the ITRI Tin Supply Chain Initiative (iTSCi), a phased approach towards improved due diligence, governance, and traceability of cassiterite from the DRC.<sup>6</sup> IPC’s Solder Products Value Council (SPVC), representing the world’s leading solder manufacturers, believes that smelters and mines are in the best position to develop and implement a system to ensure mineral traceability from the exporter back to the mine site and to develop chain of custody data. Furthermore, the IPC SPVC supports ITRI’s efforts to achieve that goal.

The iTSCi initiative has been widely welcomed with constructive feedback from the United Nations, the Organization for Economic Cooperation and Development (OECD) and a number of specialist non-governmental organizations (NGOs). Michael Biryabarema, director of Rwandan Geology and Mines Authority (OGMR) recently commented, “The recently agreed U.S. ‘conflict minerals’ bill presents many challenges to African mining and mineral trading businesses, not least the implementation of full and complex due diligence procedures that have not yet been prescribed in detail by relevant authorities. The iTSCi scheme can assist in mitigating the impacts of such regulation by meeting the anticipated requirements as far as possible within the exceedingly short timescales for compliance available to industry and national Governments alike.”<sup>7</sup>

The first phase of the iTSCi scheme began operation in July 2009. The goal of this phase is to ensure that all official export and evaluation documentation is available with mineral shipments for export. The first phase focuses on the immediate supply chain from the DRC exporter/comptoir to smelter and introduces due diligence procedures, which will ensure the legitimacy of suppliers and the mineral, which they export. A newly agreed procedure for recording a range of export documents, as well as a specially designed “comptoir certificate,” forms the basis of the first phase. The comptoir’s certificate will record a physical description of

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<sup>5</sup> Resolve, *Tracing a Path Forward: A Study of the Challenges of the Supply Chain for Target Metals Used in Electronics*, April 2010.

<sup>6</sup> [http://www.itri.co.uk/POOLED/ARTICLES/BF\\_PARTART/VIEW.ASP?Q=BF\\_PARTART\\_310250](http://www.itri.co.uk/POOLED/ARTICLES/BF_PARTART/VIEW.ASP?Q=BF_PARTART_310250)

<sup>7</sup> 10 Sep 2010 Press Release, “ITRI and Rwandan Government to co-operate on iTSCi conflict mineral traceability scheme.” [http://www.itri.co.uk/pooled/articles/BF\\_NEWSART/view.asp?Q=BF\\_NEWSART\\_320726](http://www.itri.co.uk/pooled/articles/BF_NEWSART/view.asp?Q=BF_NEWSART_320726)

the material, together with the declared mine origin and transport route via the intermediate ‘negociant’ supplier.

Implementation of the iTSCi process in the eastern DRC is currently suspended because all mining activity in the eastern DRC has been temporarily suspended by the government of the DRC since September, 2010. In September and October 2010, the tin, tantalum and electronics industry project partners spent 10 days visiting the DRC and Rwanda in order to see recent progress in the iTSCi mineral traceability project implementation on the ground. The delegation also attended the joint International Conference on the Great Lakes Region (ICGLR) and OECD meeting in Nairobi to discuss due diligence guidance on mineral sourcing from conflict-affected areas.

Future phases of iTSCi will extend the level of knowledge by collating upstream supply chain information from mine to exporter/comptoir. At that stage ITRI intends to work with project partners within the DRC from relevant technical organizations and official services. A third phase of the project is envisioned to develop a more detailed set of supply chain performance standards and ratings that will allow both qualitative and quantitative assessment of a range of factors at each level of the supply chain.

## **2. The Electronic Industry Citizenship Coalition/ Global e-Sustainability Initiative**

In 2009, the Electronic Industry Citizenship Coalition (EICC) and Global e-Sustainability Initiative (GeSI) launched a project to improve visibility in the minerals supply chain, with particular focus on identifying sources of specific minerals and understanding how the minerals move through their lifecycles — from mine to electronics manufacturing. A number of IPC’s larger members are directly participating in and supporting the EICC/GeSI initiative. A summary report of that research project, *Tracing a Path Forward: A Study of the Challenges of the Supply Chain for Target Metals Used in Electronics*, was published in April 2010 by the RESOLVE group, which lead the project. The RESOLVE group found that despite companies best efforts they, “face significant challenges due to a lack of transparency and complex structure and relationships in particular metals supply chains.”

RESOLVE’s research was built around an effort to trace the supply for these metals beginning with suppliers for GeSI and EICC member companies and then pursuing suppliers upstream in the supply chain. RESOLVE also undertook a review of supply chain initiatives relevant to the tin, tantalum, and cobalt supply chains, and the supply chain for other metals in electronics such as gold. RESOLVE sought input from a stakeholder advisory group of diverse organizations including GeSI and EICC members, international and local NGOs, mining companies, investors, and trade associations.

In 2010 EICC/GeSI launched a pilot tantalum smelter validation process. This process will identify smelters that can demonstrate through third party validation that they only source conflict-free material. Over the course of the next few quarters the program will be expanded to include tin and possibly other metals. The group continues to engage companies from all levels

of the tantalum mining and processing industry to drive toward a credible solution that promotes the responsible sourcing of tantalum.

### **3. IPC Materials Declaration Standard**

IPC 1752 Materials Declaration standard for electronic data exchange of product materials information is expected to be modified to assist the electronics industry in validating supply chain compliance with conflict metals legislation and regulation. IPC 1752 Materials Declaration standard was developed to assist the electronics industry in exchanging data related to compliance with the RoHS Directive. When the RoHS Directive was first implemented, the electronics industry faced an enormous challenge in identifying the presence of six prohibited substances throughout a broad and deep supply chain. As a result of company's efforts to assess their use of these substances, members of the supply chain were sending and receiving dozens of materials declaration inquiries each week. In order to make this process more efficient and allow data to be shared across the supply chain, IPC formed the IPC Supplier Declaration Committee (IPC 2-18). The IPC 2-18 task group on materials declaration, which was responsible for development of IPC 1752 and the recently published revision, IPC 1752A, has begun conversations regarding the exchange of data related to compliance with the forthcoming SEC regulations on conflict minerals. It is expected that changes to the standard will be implemented once the SEC has finalized their regulations.

### **B. Organization for Economic Co-operation and Development (OECD) Framework Due Diligence Guidance**

The Organization for Economic Co-operation and Development (OECD) is currently developing practical guidance for managing the supply chain of key minerals from conflict-affected and high-risk areas, with particular regard to the DRC, including relevant aspects of conflict financing, extortion, corruption/financial crime, human rights, security and transparency. OECD findings will be forwarded to the UN Group of Experts for consideration. While much attention is being paid to OECD efforts, IPC is concerned that this ongoing effort is only in the middle stages of development. Although much work has gone into the drafting of the guidelines, they have yet to be tested in any way. The current draft framework will be the subject to a twelve month pilot program to determine if the guidelines are feasible and implementable. Since the pilot program does not conclude until after the SEC will presumably issue a final rule, the SEC should not promulgate the OECD requirements into law as that would be premature.

## **V. Specific Recommendations for the SEC in Developing Regulations**

The SEC should use its discretion in developing regulations that take into account the current lack of accurate information and the deficiency in the transparency associated with the tracking of conflict minerals. Given the reality of trade in minerals, we have identified the following areas in which we believe the SEC should apply their discretion during the rule-making process. By adopting the recommendations set forth below, the SEC will sharpen the regulation, target the requirements, and minimize the burden on those practicing legitimate trade. Without addressing the issues of timing, transition, due diligence, and recycled materials, the regulation could have a

substantial negative impact on the health of the U.S. economy, jobs, manufacturing, and exports while negatively impacting the welfare of the very people Section 1502 was intended to assist.

#### **A. Timing of Implementation of the SEC Regulations**

As discussed (Section IV), a number of governmental and non-governmental initiatives are underway to increase supply chain transparency for conflict minerals. These systems are in their infancy. Further, they are hampered by insecurity on the ground in the DRC as well as governmental actions that have shut down some of the mines for an unknown period of time. It is highly unlikely that a full scale-up of these programs will be possible by the April 2011 deadline imposed by Section 1502. The SEC should therefore use its discretion to implement a phased-in approach to the regulations requiring OEMs to declare whether the minerals used in their products are conflict-free or not.

Failure to establish a realistic, implementable time-line for required supply chain transparency will result in significant, negative unintended consequences for those engaged in legitimate minerals trade. As it will be impossible to implement measures to provide chain of custody from all conflict mines to smelters by April 2011, companies required to declare the conflict status of their products will likely seek supply chains outside of the DRC and the adjacent countries. While the minerals trade represents a significant, and often only, source of income for many in the region, the supply of minerals from this region is not critical to world markets. In order to be able to label their products conflict-free, OEMs will have no choice but to impose a de-facto ban on minerals originating in the DRC. This will impose real financial hardship the thousands of legitimate miners, traders, comptoirs and negociants in the region that depend on the minerals trade. In order to avoid these consequences, we recommend that the SEC adopt a schedule that will allow enough time for the implementation to supply chain traceability in the DRC so that legitimate trade can continue to provide critical financial support for individuals in the region.

#### **B. Rules Are Needed to Phase in the Requirements**

In order to make the reporting requirements useful and practicable, it is necessary for the SEC to implement transition rules to address minerals already present in the supply chain when the regulation is implemented. Additionally, regulations will be needed to address minerals from a mine that changes status from “non-conflict” to “conflict.” Without these transition rules, users of conflict metals will not be able to identify themselves as “conflict-free,” until the regulations have been in place for a number of years.

Although a number of efforts to institute smelter verification programs and thereby establish a supply of “conflict-free” minerals and refined metals are underway, it will be some time before these processes have been fully implemented and validated. It is therefore necessary to establish a transition period that exempts minerals or processed metals already at smelters, processing centers, or other downstream positions in the supply chain that was obtained prior to a specified implementation date. If there is no transition rule for materials already in the supply chain prior to a validation program then all smelted metals for the initial reporting will have to be reported as being of unknown origin. This is because manufacturers will be unable to obtain the information as all minerals are comingled without respect to country or mine of origin.

Similarly, products manufactured with the refined metals already incorporated in finished goods or from conflict minerals already in the suppliers' inventories prior to an established cutoff date should be exempt. This exemption will allow for the design and implementation of programs to impose identification requirements on their upstream supply chains. Again, absent a transition rule, filers will be forced to identify all products as containing conflict minerals of unknown origin in the initial reporting period.

We encourage the SEC to adopt a no-transubstantiation rule stating that if a mineral is 'conflict-free' when it arrives at the smelter, it cannot become "conflict-full" if it's mine of origin changes status during the period that the mineral/refined metal is moving through the supply chain. The State Department identified this as a challenge to properly identifying which mines are controlled by parties perpetrating atrocities. From the extraction of the minerals from the mines to the incorporation of the refined metals into products manufactured in the United States, significant time will pass and "conflict mines" will change status. For this reason, a no-transubstantiation rule is recommended.

## **O. Due Diligence**

Section 1502 requires filers to report on the due diligence they have exercised over the source and chain of custody of minerals mined in conflict regions. It has been suggested that due diligence requires the company filing with the SEC to identify all parties between the mine and the SEC filer, i.e. the entire supply chain. This is both impracticable and inefficient due to the complexity of the supply chain and the nature of minerals processing. Instead, we encourage the SEC to allow companies to develop supply-chain implemented solutions that are efficient and effective

We urge the SEC to avoid defining "due diligence" in a manner that prescribes specific requirements for due diligence. Each company in the electronics supply chain is unique and has their own unique supply chain. Some companies are quite large and have extensive resources, while others do not. Given the diversity of companies and products impacted by future regulations regarding Section 1502, the SEC should avoid defining the particular details of what constitutes due diligence. We urge the SEC to provide companies the flexibility to develop a due diligence plan that is consistent with their supply chain and information available within.

Requiring each company filing with the SEC to identify and audit their entire supply chain is exceedingly inefficient. Rather, we submit that the filer work with its direct suppliers to promulgate requirements to use conflict free minerals/metals upstream. Specifically, we encourage the SEC to recognize the following elements of due diligence:

- Contractual obligations on direct suppliers to exclude conflict minerals mined in the Democratic Republic of the Congo or an adjoining country from goods supplied to the company subject to the SEC.
- Implementation of a risk-based program that uses company control processes to verify that suppliers are providing credible information and pushing contractual obligations upstream.

- Participation in, or reliance on, information gained from an industry wide or smelter validation process such as those described in Section IV of these comments.
- Reliance on government-produced information, such as the mapping of conflict regions assigned to the Departments of State and Commerce, should be presumed to satisfy the requirement that due diligence be reliable for those elements of due diligence that require working with suppliers to prevent sourcing from conflict mines or refiners using conflict minerals. In addition, the governments of the DRC and adjoining counties are engaging in an evolving set of measures to suppress trade in minerals from conflict mines.

The legislative requirement for companies to exercise due diligence over the source and chain of custody of conflict-minerals should not be interpreted to require the establishment of a chain of custody reaching from the product to the mine. Establishing a chain of custody over the metals that have been refined from conflict minerals must be recognized as impossible. While we recognize that the problem of conflict minerals originates in conflict mines, we also recognize that the mine of origin is often very far removed from the manufacturer required to report under the law. Further, once minerals have been processed into metals, individual lots of minerals can no longer be isolated. In such scenarios, tracing the chain of custody requirement to the smelter is exceedingly difficult, while tracing it beyond the smelter is nearly impossible. Any chain of custody for the origin of minerals must be recognized to end at the smelter. Therefore, we urge the SEC to clarify that the legislative requirement for companies to report to the SEC the measures they have taken to exercise due diligence on the source and chain of custody of minerals to mean that persons covered by the Act will report on the measures they have taken to ensure that the mineral processors involved in their supply chains identify the sources of conflict minerals in their products.

Given the nature of the situation on the ground in the DRC, it is important for the regulation to recognize that due diligence does not require 100% accuracy, given that certainty is not possible with the situation on the ground and the fluid nature of supply chains. Evidence that conflict minerals may have entered a supply chain despite the exercise of due diligence should not render a report unreliable if the reporting person has exercised reasonable care in conducting its due diligence process. As stated by RESOLVE, “Processed material can be deemed “conflict free” only if all material entering a processing facility is tracked or batched and handled separately from materials of different origin... This means that, today, while end-use companies have the potential to establish and have confidence in sources for some percentage of the metals in their products, they cannot assert 100% sourcing certainty about individual metals or the product as a whole without significant alterations and/or assurance mechanisms in their supply chains. Success requires confidence in supply chain relationships and new strategies, such as direct sourcing, or innovations, such as minerals tagging or fingerprinting. Movement is likely to come in a step-wise manner.” We urge the SEC to be cognizant of existing limitations and developing compliance schemes when developing requirements.

## **P. Exemption for Recycled Minerals**

The regulations should specifically exempt recycled or reclaimed metals, as downstream users have no ability to trace the origin of the original minerals. The traceability of the reclaimed

metals is impossible to track due to the various forms of recycling and thousands of consolidators, reclaimers, and scrap dealers both foreign and domestic.

We believe Congress intended to regulate ore and metal refined directly from minerals mined from the DRC and adjoining countries. Exempting recycled or reclaimed metals does not contradict the congressional intent, to stop funding the atrocities in the DRC. The DRC rebel groups are funded by operating mines to extract and sell ore, and by extracting tariffs from those transporting ore. The DRC rebel groups do not obtain revenue from trading in recycled materials. Accordingly, recycled metal was not intended to be covered by the statute and should be excluded in the SEC's regulations.

Furthermore, given other government efforts to encourage recycling in electronics and other industries, we presume that the SEC would not wish to contradict recycling promotion by failing to provide necessary exemptions for recycled metals.

## **VI. Economic Impact**

We believe the regulation should be implemented in a manner that minimizes costs and the burden on companies without diminishing the intent of the legislation. We encourage the SEC to conduct a thorough cost analysis on the impact of this regulation before issuing a final rule. The overall impact on the economy is likely greater than \$100 million (the threshold established in E.O. 12866 to warrant further scrutiny of a proposed rule by the Office of Management and Budget (OMB)). Expected costs to comply with the regulation include new computer systems to track, store and exchange data regarding mineral origins; evaluation of products; review of the supply chain; modification of supplier contracts; participation in smelter validation programs; and independent third party audits.

SMMs will be disproportionately affected by the requirements under this regulation. SMMs will face larger per unit compliance costs because they have smaller business volumes and more limited resources with which to conduct audits and manage the required documentation. Additionally, SMMs may have difficulty in controlling their suppliers sourcing of conflict minerals as their small size affords them limited leverage over their suppliers. SMMs do not have the customs and compliance staff typical of larger corporations and companies thus making compliance efforts even more difficult. As required by the Regulatory Flexibility Act, the SEC must provide economic analysis on the impact to small businesses. To ameliorate the impact on SMMs, we encourage the SEC to allow maximum flexibility in the implementation of Section 1502.

## **VII. Conclusion**

IPC is committed to addressing the use of conflict minerals and is actively working with many of its members on both a domestic and international level to address the issue. IPC member companies are participating in a variety of sector specific initiatives to develop industry wide protocols for removing conflict minerals from supply chains as well as with international



organizations. Given the broad potential impact of these regulations on the day-to-day operations of manufacturing companies throughout the United States, and the impacts on legitimate trade in the DRC, we urge the SEC to exercise caution when implementing regulations under Section 1502 of the Dodd-Frank Act. Specifically, we encourage the SEC to allow maximum time and flexibility for industry to implement these potentially far-reaching rules. We encourage the SEC to allow companies the flexibility to develop appropriate, supply-chain-based due diligence processes. We also encourage the SEC to develop appropriate exemptions for recycled materials and materials already in the manufacturing supply chain at the time these regulations are implemented. Finally, we ask the SEC to conduct a thorough economic analysis of the draft regulations to ensure that they have implemented the underlying goals of the legislation without imposing undue burden on manufacturers and the American economy.

We look forward to continuing to work with the SEC. Please contact me should you have any questions.

A handwritten signature in cursive script, reading "Fern Abrams".

Fern Abrams  
Director of Government Relations and Environmental Policy