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March 2, 2011

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

Re: UProposed Conflict Minerals Disclosure – File No. S7-40-10

Dear Ms. Murphy:

In Release No. 34-63547 (the "Release"), the Commission has proposed amendments to its rules and forms (the "Proposed Rules") to implement Section 1502[1] of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") by requiring disclosures relating to "conflict minerals"[2] originating in the Democratic Republic of the Congo (the "DRC") or an adjoining country.[3] We welcome the opportunity to comment on the proposal.

In general, the proposal is a laudable effort by the Commission to develop a workable disclosure regime in light of the statutory strictures imposed by Congress. However, we recommend that the Proposed Rules be modified in certain respects to conform better with

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1 Part of Section 1502 has been incorporated into the Securities Exchange Act of 1934, as amended (the "Exchange Act") as new Exchange Act Section 13(p).

2 As defined in Section 1502(e)(4), conflict minerals consist of columbite-tantalite (coltan), cassiterite, gold, wolframite and their derivatives (including tin, tantalum, and tungsten), and any other mineral and its derivatives determined by the Secretary of State to be financing conflict in the DRC or an adjoining country.

3 We use the term "DRC countries" to refer to the DRC and its adjoining countries, which are defined in Section 1502(e)(1) as countries that share an internationally recognized border with the DRC.

what we view as the twin purposes of Section 1502: (i) to enlist the support of reporting companies in efforts to address the emergency humanitarian situation in the DRC and (ii) to provide the public and investors with clear, manageable information on the use of conflict minerals originating in the DRC countries.

We believe the rules implementing Section 1502 should take into account these purposes, which as noted in the Release are "qualitatively different from the nature and purpose of the disclosure of information that has been required under the periodic reporting provisions of the Exchange Act."[4] Section 1502 of the Dodd-Frank Act, much like the provision on payments to governments by resource extraction issuers in Section 1504 of the Dodd-Frank Act, is best understood as an attempt to use the existing disclosure regime to accomplish a policy aim that is essentially unrelated to the traditional objective of disclosure under the securities laws – in the case of Section 1502, to "help end the emergency humanitarian situation in the eastern DRC that is financed by the exploitation and trade of conflict minerals originating in the DRC countries."[5] Because the disclosure mandated under Section 1502 is intended for a different audience and has an entirely different purpose than investor and market protection, the statute should be implemented in a way that makes the disclosure readily available to interested parties without unduly burdening issuers or interfering with the traditional disclosure made for the use of investors. To the extent that any of the information is material to investors and it falls within line item requirements or its omission would make the statements made misleading (under the circumstances in which they are made), it is of course already required to be disclosed by the Commission's existing rules.[6]

As the Commission acknowledges in the Release, "the burden on issuers to determine the origin of their conflict minerals could be significant."[7] We anticipate that this will indeed be the case, particularly in the initial period as issuers work to develop the necessary policies and procedures to monitor, organize and report on the source of their conflict minerals. We strongly urge the Commission to keep these burdens of compliance in mind when promulgating final rules and, where possible, to seek to reduce the cost to issuers where doing so will not be inconsistent with specific statutory provisions or undermine the statutory purpose of the disclosure.

Required Disclosure Should Not Go Beyond the Dodd-Frank Act Requirements

In light of the qualitatively different purpose of Section 1502 and the significant burden that compliance with the new disclosure requirements will impose on issuers, we strongly

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4 Release at 51.

5 Release at 51.

6 For example, material information may be required in periodic reports under the Exchange Act pursuant to Regulation S-K Item 101 (Business), Item 303 (Management's Discussion and Analysis of Financial Condition and Results of Operations) and Item 503(c) (Risk Factors) and, for foreign private issuers, pursuant to the analogous provisions of Form 20-F.

7 Release at 71.

urge the Commission not to expand the scope of the required disclosure beyond that set out in the Dodd-Frank Act. The Commission is well aware that insofar as registrants are unduly burdened by the new disclosure requirements, the ultimate cost will be borne by investors, customers and the economy. Although the Proposed Rules are a thoughtful effort to implement Section 1502 in a workable manner, they exceed the scope of Section 1502 in three fundamental respects, and we strongly urge the Commission to revise these elements of the proposal:

- *No Disclosure of Country of Origin Inquiry in Body of Report* – Under Section 1502, an issuer that concludes it has necessary conflict minerals[8] that did *not* originate in the DRC countries must only disclose that conclusion[9] – there is no requirement in the Dodd-Frank Act for disclosure of the inquiry process the issuer undertook in coming to that conclusion. Rather, Section 1502 only provides for increased disclosure requirements (which take the form of the Conflict Minerals Report) once an issuer has affirmatively determined that its necessary conflict minerals originated in a DRC country. Accordingly, we recommend that the Proposed Rules be revised to remove the requirement to disclose the reasonable country of origin inquiry from proposed Regulation S-K Item 104(a) and Item 16(a) of Form 20-F. We acknowledge the underlying policy rationale for including this additional disclosure, as a way to underscore the importance of conducting sufficient inquiry, but the same goal would be met by including an instruction to proposed Regulation S-K Item 104(a) and Item 16(a) of Form 20-F stating that an issuer must conduct a reasonable country of origin inquiry in coming to its determination, without requiring additional disclosure. (Comment Requests #26 and 27)

- *No Requirement for Reviewable Business Records* – Similarly, Section 1502 does not require the Commission to include in the new rules any requirement for an issuer to maintain reviewable business records to support its determination of the source of its conflict minerals.[10] This requirement is also unnecessary and provides an independent "books and records" requirement, beyond existing requirements for an issuer to maintain adequate books and records under the Exchange Act,[11] which is not contemplated by Section 1502. Such an extension of liability and the expected additional burden on issuers are not justified in the absence of a statutory mandate. Accordingly, we recommend the Proposed Rules be revised to remove this

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8 We refer to a person for which "conflict minerals are necessary to the functionality or production of a product manufactured by such person," as contemplated by Exchange Act Section 13(p)(2)(B), as a person with "necessary conflict minerals."

9 Exchange Act Section 13(p)(1)(A) requires that an issuer must disclose "whether conflict minerals that are necessary [to its products] did originate in [a DRC country]" and only "in cases in which such conflict minerals did originate in a [DRC country]" must an issuer disclose further information.

10 The Release indicates that this requirement was suggested in a comment letter.

11 Exchange Act Section 13(b)(2) requires issuers, among other things, to "keep books, records, and accounts [that] in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of [such] issuer."

requirement from proposed Regulation S-K Item 104(a) and Item 16(a) of Form 20-F. (Comment Request #28)

- *Conflict Minerals Report Only If Origination in DRC Countries* – Likewise, Section 1502 does not require an issuer that has been unable to determine (after proper inquiry) the source of its conflict minerals, or whose conflict minerals are from recycled or scrap sources, to provide a Conflict Minerals Report. As noted above, under Section 1502, the increased disclosure requirements are only implicated once an issuer has affirmatively determined that its necessary conflict minerals originated in a DRC country. The statute uses the phrase "in cases in which such conflict minerals *did originate* in [a DRC country]," [12] as the trigger for providing a Conflict Minerals Report. It also uses the phrase "products manufactured or contracted to be manufactured that are not DRC conflict free ('DRC conflict free' is defined to mean the products that do not contain minerals that directly or indirectly finance or benefit armed groups in the [DRC countries])" [13] to describe an element of the disclosure to be included in the Conflict Minerals Report. The latter phrase could be understood to include cases where the source of the minerals is uncertain or where the minerals are from recycled or scrap sources, but we do not believe that broader scope should be read into other parts of Section 1502, especially the basic core provisions triggering the report requirement, where that provision is clearly and unambiguously drafted with a narrower scope. Accordingly, we recommend the introductory paragraph in proposed Regulation S-K Item 104(b) and Item 16(b) of Form 20-F be revised to require a Conflict Minerals Report only if an issuer determines that its necessary conflict minerals originated in the DRC countries. (Comment Requests #53 and 63)

  If the Commission disagrees with this approach, the Commission could consider taking a middle ground approach for cases in which the issuer is unable to determine the source of the conflict minerals. Even though not required by Section 1502 as noted above, perhaps disclosure of the country of origin inquiry could be required in this situation instead of the Conflict Minerals Report, as much of the information required in the Conflict Minerals Report will not be applicable if, after proper inquiry, the issuer is unable to determine the source of its conflict minerals. The case in which an issuer determines that its conflict minerals are from recycled or scrap sources, however, seems very different from that of the unknown source and more like a determination that the source was not in the DRC countries. Accordingly, in the case of conflict minerals from recycled or scrap sources, we urge the Commission to require only a statement that the conflict minerals are from recycled or scrap sources, even if the Commission decides to keep the report requirement in the case of unknown sources.

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[12] Exchange Act Section 13(p)(1)(A) (emphasis added).

[13] Exchange Act Section 13(p)(1)(A)(ii).

In short, we recommend that the Commission revise the Proposed Rules as follows (our proposed changes are indicated in the text of proposed Item 104; proposed Item 16 of Form 20-F would change correspondingly):

§229.104 (Item 104) Conflict minerals disclosure.

(a) If any conflict minerals, as defined by paragraph (c)(3) of this section, are necessary to the functionality or production of a product manufactured or contracted to be manufactured by the registrant in the year covered by the annual report, the registrant must disclose in its annual report under a separate heading entitled "Conflict Minerals Disclosure" whether any of these conflict minerals originated in the Democratic Republic of the Congo or an adjoining country, as defined by paragraph (c)(1) of this section or that the registrant is not able to determine that its conflict minerals did not originate in the Democratic Republic of the Congo or an adjoining country. ~~The registrant's determination of whether or not any of these conflict minerals originated in the Democratic Republic of the Congo or an adjoining country, or its inability to determine that these conflict minerals did not originate in the Democratic Republic of the Congo or an adjoining country, must be based on its reasonable country of origin inquiry.~~ If the registrant determines that ~~its~~ conflict minerals necessary to the functionality or production of a product manufactured or contracted to be manufactured by it did not originate in the Democratic Republic of the Congo or an adjoining country, <u>if the registrant is not able to determine that its conflict minerals did not originate in the Democratic Republic of the Congo or an adjoining country, or if such conflict minerals came from recycled or scrap sources,</u> the registrant must make that disclosure available on its Internet website and must also disclose this determination in its annual report under the separate "Conflict Minerals Disclosure" heading ~~along with the reasonable country of origin inquiry it undertook to make its determination~~, <u>along with a statement</u> that its disclosure is located on its Internet website, and the address of that Internet website. The disclosure must remain on the registrant's Internet website at least until the registrant files its subsequent annual report. ~~Also, the registrant must maintain reviewable business records to support any such negative determination.~~

(b) If any conflict minerals necessary to the functionality or production of a product manufactured or contracted to be manufactured by the registrant originated in the Democratic Republic of the Congo or an adjoining country, ~~if the registrant is unable to determine that such conflict minerals did not originate in the Democratic Republic of the Congo or an adjoining country, or if such conflict minerals came from recycled or scrap sources,~~ the registrant must:

(1) Furnish a Conflict Minerals Report as an exhibit to its annual report with the following information:

[. . .]

<u>Instructions to Item 104</u>

[. . .]

(3) The registrant's determination whether any conflict minerals necessary to the functionality or production of a product manufactured or contracted to be manufactured by the registrant originated in the Democratic Republic of the Congo or an adjoining country, or its inability to determine that these conflict minerals did not originate in the Democratic Republic of the Congo or an adjoining country, must be based on its reasonable country of origin inquiry.

Location, Timing, Format and Liability Standards

New, Standalone Annual Report

In light of the qualitatively different purpose of Section 1502 and the significant burden that compliance with the new disclosure requirements will impose on issuers (and in particular the significant time that will be required to comply with the new disclosure requirements), we strongly urge the Commission to provide for a new, standalone report for this disclosure that would be furnished annually on EDGAR, rather than adding it to the existing requirements of Form 10-K, Form 20-F or Form 40-F (collectively, the "existing annual reports"). Section 1502 merely requires that an issuer must "disclose annually"[14] the required information, but does not specify that it be included in the existing annual reports. Section 1503 of the Dodd-Frank Act, in contrast, specifically requires inclusion of the new disclosure in existing periodic reports. (Comment Request #22)

The Release suggests that requiring disclosure in the existing annual reports would be "less burdensome" than requiring a new separate report because issuers are already required to submit the existing annual reports. We disagree. Inclusion of the new disclosure in the existing annual reports will be significantly more burdensome for issuers than preparing a new form of report. Given the already demanding information-gathering and presentation requirements for the existing annual reports, the imposition of novel and complex requirements may subject some reporting companies to a risk of being unable to file timely reports, which could result in adverse consequences for investors in, and customers of, those companies. The deadlines for the existing annual reports were developed in light of the purposes and contents of the annual report to investors and practices in the marketplace. There is no reason why the timing of conflict minerals disclosure should be tied to the timing of the existing annual reports, and a separate report would allow setting a different deadline without requiring amendment of the existing annual reports, which may cause investor confusion.

In addition, disclosure on a separate form would be easier to locate and use. The users of this conflict minerals information will include concerned citizens, media academics, governments and non-governmental organizations, some of which may be less familiar with the

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[14] Exchange Act Section 13(p)(1)(A).

complex existing annual reports than the investor audience for which the existing annual reports were designed. Using a separate form will better promote the objective of the statute by making information more readily accessible both for its intended users and for investors that may wish to review such information.

If the Commission decides against the use of a new separate form for this disclosure, we recommend that the disclosure be made by means of a new Item to Form 8-K (with a single annual deadline, without the applicability of the four business day requirement) for domestic issuers and on Form 6-K for foreign private issuers. This would also address the difficulty of meeting the timing constraints of the existing annual reports. (Comment Request #49)

If the Commission disagrees with the approaches we recommend above and requires inclusion of the conflict minerals disclosure in the existing annual reports, we recommend that the Commission permit issuers to amend the existing annual reports post-filing to provide the required conflict minerals disclosure pursuant to a later deadline, so that the significant time expected to be required to obtain and organize the conflict minerals information will not prevent an issuer from timely filing its annual report. We believe this should be a permanent feature of the rule, but it would be particularly essential in the early years of implementation to provide for later filing deadlines. Reasonable later deadlines also have no impact on the underlying effectiveness of Section 1502. We agree with the Commission that Rule 3-09 of Regulation S-X under the Exchange Act[15] would serve as a model for this kind of provision. If the Commission takes this approach, we recommend that it clarify that new registration statements filed and shelf takedowns and other offerings and similar transactions may occur in the period between annual report deadline and the due date for the required conflict minerals disclosure. (Comment Request #57)

In addition, we support the Commission's proposal that there be very brief disclosure in the body of the existing annual report (which should not include any of the contents of the Conflict Minerals Report), with the more extensive disclosure contained in the Conflict Minerals Report as an exhibit. Including any of the contents of the Conflict Minerals Report in the body of the report would be unnecessarily confusing and would provide a deluge of information that is not necessarily material to investors in the already extensive annual report. (Comment Requests #23, 24, 25 and 30)

Phase-In of Requirements

Because of the complexity of these requirements, the Commission should consider phasing in some or all of the disclosure obligations under Section 1502. Likewise, an issuer should benefit from a phase-in period or temporary exemption with respect to recently acquired operations or operations held on a temporary basis. The one-year exemption for

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[15] Regulation S-X Rule 3-09 permits amendment of an annual report post-filing to provide certain subsidiary financial statements.

acquisitions in the context of internal control over financial reporting disclosure,[16] or the staged introduction of reporting on internal control over financial reporting, could serve as a model for this approach.

Furnished, Not Filed and Related Provisions

Several other implications follow from the recognition that conflict minerals disclosure serves different purposes from other disclosures under the Commission's rules and forms. Some of these are already reflected in the Commission's proposal:

- *Furnished, Not Filed* – We strongly support the Commission's proposal that the conflict minerals disclosure be deemed "furnished" to the Commission and not "filed" or subject to Exchange Act Section 18 liability. (Comment Requests #46, 47 and 48)

- *No Incorporation By Reference* – We strongly support the Commission's proposal that the conflict minerals disclosure, including in particular the Conflict Minerals Report and the independent private sector audit, not be deemed to be incorporated by reference into any other filing under the Securities Act of 1933, as amended (the "Securities Act") or the Exchange Act, except to the extent that the issuer specifically incorporates it by reference. (Comment Request #44)

The Commission should also add the following related concepts to the Proposed Rules (to the extent applicable):

- *Sarbanes-Oxley Act Certifications Should Not Apply* – If the Commission requires the conflict minerals disclosure in the existing annual reports, we urge the Commission to include a clear statement in the rules or the adopting release that the officer certifications required to be included as exhibits to the existing annual reports[17] would not apply to the conflict minerals disclosure.[18]

- *No Loss of S-3 and F-3 Eligibility* – We strongly urge the Commission to make clear that, wherever the disclosure is required to be provided, failure to timely file that disclosure will not result in the loss of eligibility to use Form S-3 and Form F-3 registration statements or make the issuer an "ineligible issuer" pursuant to Rule 405

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16 *See* Division of Corporation Finance: Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports – Frequently Asked Questions, Question 3 (as revised Sept. 24, 2007).

17 *See* Exchange Act Rules 13a-15(e), 13a-15(f), 15d-15(e) and 15d-15(f).

18 There is precedent for not applying Sarbanes-Oxley Act certifications to information that is "furnished" to the Commission. The Staff of the Division of Corporation Finance has indicated that the furnished compensation committee report in a company's Form 10-K, for example, is not covered by the officer certifications. *See* http://www.sec.gov/news/speech/2006/spch100306jww.htm.

under the Securities Act (resulting in, among other things, ineligibility to file automatically effective registration statements).

- *No Loss of Rule 144 Eligibility* – We also urge the Commission to make clear that, wherever the disclosure is required to be provided, failure to file that disclosure will not affect eligibility to use Rule 144 under the Securities Act (*i.e.*, the approach should mirror that currently applicable to Form 8-Ks).

No Interactive Data Format

We strongly support the Commission's proposal not to require that the new disclosure be included in an interactive data format, such as XML or XBRL. The conflict minerals disclosure is not of a type that lends itself to the kind of statistical analysis that interactive data facilitates. We note that many issuers have recently experienced timing and other difficulties in filing interactive data, and additional interactive data requirements would further increase this burden on issuers. (Comment Request #29)

Scope and Definitions

Issuers Exempt Under Rule 12g3-2(b) Should Not Be Covered

We strongly support the Commission's decision not to require an issuer that has a class of securities exempt from Exchange Act registration pursuant to Exchange Act Rule 12g3-2(b) to provide conflict minerals disclosure. Any such requirement would be out of line with the existing Exchange Act Rule 12g3-2(b) framework, which permits certain foreign private issuers listed outside the United States to make available to U.S. investors information provided to investors in the home country and otherwise not file Exchange Act reports. (Comment Request #2)

Non-Reporting and Private Companies Should Not Be Covered

We strongly oppose any suggestion that individuals or non-reporting or private companies be subject to the conflict minerals disclosure requirements. As noted in the Release, given the provision's background and its location in the section of the Exchange Act dealing with reporting issuers, an overly broad reading of the provision to extend to individuals or non-reporting or private companies would be unwarranted. Furthermore, it is unclear how the Commission would implement and enforce such an extended regime. (Comment Request #6)

"Manufacturers" Should Have Influence over Manufacturing Process

We believe an issuer should have some level of influence over the manufacturing process before it is considered to be "manufacturing" or "contracting to manufacture" a product. (Comment Request #11)

We agree with the Commission that a retailer that sells only the products of third parties "with no contract or other involvement" in the manufacturing process is not "manufacturing" and should therefore not be subject to the conflict minerals disclosure

requirements. We also believe, however, that a retailer that sells a product under its own brand name or a separate brand name it has established should not be deemed to be "manufacturing" or "contracting to manufacture" unless it has some involvement in or influence over the manufacturing process. We do not understand how the purposes of Section 1502 are served by reading "manufacture" beyond its plain meaning to reach a retailer without such involvement. We therefore strongly urge the Commission to reverse the interpretation advanced in the Release. (Comment Request #12)

Mining Companies Should Not Be Deemed "Manufacturers"

Based on the language and purpose of Section 1502, we do not believe the plain meaning of "manufacture" should be extended to cover mining. The language of Section 1502 does not refer to mining, nor does it suggest that the term "manufacture" should include mining activities. The Commission suggested elsewhere in the Release that the plain meaning of "manufacture" is generally understood (and we agree), and this plain meaning does not encompass mining activities. It also seems to be a significant departure from the statutory language to suggest that mining companies should be required to conduct inquiries and make disclosure about the "source" of minerals that are "necessary to the products they manufacture", when the source is the issuer itself and the products are the minerals. Furthermore, Section 1502 is intended to elicit disclosures because of a concern that both manufacturers and the consumers who purchase their products may be unaware that revenue from selling minerals used in those products may be used to finance armed conflict in the DRC. If a mining company is not purchasing minerals but rather itself extracts them from the ground, it does not present the problem which Section 1502 addresses. If the Commission disagrees with this approach, however, we recommend that a mining company be required to disclose whether or not it has operations in a DRC country and nothing more. (Comment Requests #13, 14 and 15)

Definition of "Necessary" Not Needed

We support the Commission's proposal not to define the phrase "necessary to the functionality or production of a product." We believe any attempt to define the phrase might result in a definition that is over- or under-inclusive of what Congress intended. (Comment Requests #16, 17, 18, 19, 20 and 21)

"Possession" Is an Appropriate Standard for Triggering Disclosure

We agree with the Commission's approach that "possession" is the proper determining factor as to when issuers should provide conflict minerals disclosure. Any other timing regime could result in issuers being forced to look back historically to periods prior to the promulgation of Section 1502 and the effective date of the Commission's rules implementing it. (Comment Request #59)

In addition, it would be inappropriate to require conflict minerals disclosure for conflict minerals that issuers may have in existing stockpiles. To require these issuers to now conduct the arduous process of identifying which conflict minerals were acquired from what

sources prior to Section 1502 coming into effect would unduly harm issuers. (Comment Request #61)

Use of "Conflict Minerals"

We encourage the Commission to be sensitive to potential negative connotations attached to the phrase "conflict minerals" and, to the extent possible, only require use of the phrase when the minerals at issue directly or indirectly finance conflict in the DRC countries. The Commission could use a more neutral term such as "subject minerals" to designate the class of minerals as to which origin is an issue under the rules.

Reasonable Country of Origin Inquiry

Although the "reasonable country of origin inquiry" is not mandated by Section 1502, as noted above, we agree this standard is appropriate for the initial inquiry into whether an issuer's conflict minerals originated in the DRC countries. We agree with the Commission's proposal that the rule need not specify what would constitute a reasonable country of origin inquiry because the inquiry necessarily depends on an issuer's particular facts and circumstances. As with the word "necessary," as discussed above, any attempt to define the phrase might result in an over- or under-inclusive definition. We also agree with the Commission that a reasonableness standard is not the same as an absolute standard and believe issuers should be permitted to rely on reasonably reliable representations from processing facilities. An issuer should also be permitted to include qualifying or explanatory language about the nature of its inquiry, but we do not believe the rule should require such additional language. (Comment Requests #33, 34, 35 and 36)

Conflict Minerals Report

Due Diligence Standard

We agree with the Commission's approach in not attempting to prescribe the type of due diligence required for the Conflict Minerals Report. We do not think it is necessary or appropriate to specify what constitutes due diligence of the supply chain, as the standards for a reasonable process may vary and evolve over time and will depend on the facts and circumstances of a particular issuer. Although we believe an issuer should be permitted to rely on the reasonable representations of smelters or other parties in the supply chain, we do not think it is necessary for the rule to specify that this is permitted. (Comment Requests #50, 52 and 54)

We similarly believe it is unnecessary for the rules to require that an issuer use specific national or international due diligence standards. (Comment Request #55)

Content

In the event the Commission disagrees with the approach we recommend above regarding issuers that are unable to determine the origin of their conflict minerals, we recommend that those issuers be permitted to classify their products differently, such as "May

Not Be DRC Conflict Free" as suggested by the Release. This classification would be more accurate than "Not DRC Conflict Free" to describe those conflict minerals for which issuers have been unable to determine the origin. (Comment Request #37)

We agree with the Commission's position that issuers must disclose the facilities, countries of origin, and efforts to find the mine or location of origin only for those conflict minerals that do not qualify as DRC conflict free. (Comment Request #39)

We urge the Commission not to add a requirement that issuers include information on the capacity of each mine from which they source minerals, as well as the weights and dates of individual shipments. Such extensive disclosure is not required or contemplated under Section 1502 and would unduly burden issuers. (Comment Request #41)

We agree with the Commission's interpretation of Section 1502 with respect to the certification requirement (*i.e.*, that an issuer "certify the audit" by certifying that it obtained such an audit). We also agree that it is not necessary under Section 1502, and would be inappropriate, to require that anyone sign the certification. (Comment Request #42)

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We thank you for the opportunity to submit this comment letter. Please do not hesitate to contact Nicolas Grabar or Sandra L. Flow (212-225-2000) if you would like to discuss these matters further.

Very truly yours,

CLEARY GOTTLIEB STEEN & HAMILTON LLP