SOCIETY OF CORPORATE SECRETARIES
& GOVERNANCE PROFESSIONALS

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March 3, 2010

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

Re: Conflict Minerals Section 1502 of the Dodd Frank Act, File No. S7-40-10

Dear Ms. Murphy:

The Society of Corporate Secretaries & Governance Professionals (the "Society") appreciates the opportunity to respond to the Proposed Rules for Implementing Section 1502 of the Dodd-Frank Act, SEC Rel. No. 34-63547 issued on December 15, 2010 by the Securities and Exchange Commission (the "SEC" or the "Commission").

Founded in 1946, the Society is a professional membership association of more than 3,100 attorneys, accountants, and other governance professionals who serve approximately 2,000 companies of most every size and industry. Society members are responsible for supporting the work of corporate boards of directors and their committees and the executive management of their companies regarding corporate governance and disclosure. Our members generally are responsible for their companies' compliance with the securities laws and regulations, corporate law, and stock exchange listing requirements.

Introduction

The Society acknowledges that the exploitation and trade of minerals originating in the Democratic Republic of the Congo (the "DRC" or "the Congo") is helping to finance the conflict in that country, and we support the goal of eliminating human rights abuses in the DRC and neighboring countries. The Society appreciates the Commission's efforts to implement the Congressional mandate regarding conflict minerals, and acknowledges the complexity of the issues.

Most of our members' issuers who are most affected by the proposed rule are commenting through specific industry groups. We defer to those groups for detailed responses to the many questions posed. Accordingly, we are responding to the proposed rules from a public company issuer perspective and offer the following three observations.

The Conflict Minerals Report Should Not be Furnished as an Exhibit to an Issuer's Annual Report

The Dodd-Frank Wall Street Reform and Consumer Protection Act states that if required, an issuer must "submit" a report to the SEC (Section 13(p)(1)(A) of the Securities Exchange of 1934). The Proposed Rule in Section 229.104(b)(1) states that if an issuer has products which contain conflict minerals necessary to such product's functionality or production, and such minerals originated in the DRC, then the issuer must file a Conflict Minerals Report ("CMR" or the "Report") as an exhibit to its annual report.

The Society believes that the obligation to "submit" a CMR can be satisfied by disclosing in an issuer's Annual Report on Form 10-K the website address where the issuer has posted the Report. This would include posting on the website the certified independent private sector audit (the "Audit") as well.

We also support proposed Instruction 2 to Regulation S-K Item 104, by which disclosure of the web site address and the referenced Report and independent Audit should be deemed "furnished" and therefore not incorporated by reference into any other filing under the Securities Act of 1933 or Securities Exchange Act of 1934.

We believe that placing the CMR and independent Audit on an issuer's web site is an appropriate location and one that will be most helpful to investors seeking information about an issuer's use of conflict minerals. Issuers regularly use their web sites to provide information about corporate social responsibility programs and other initiatives.

Allowing the CMR and independent Audit to be placed on an issuer's website is also consistent with the SEC's own efforts to encourage issuers to use their web sites for disclosure purposes. The SEC acknowledges that "[i]nvestors are turning increasingly to electronic media and to company and third-party web sites as sources of information to aid in their investment decisions."[1] Further, the SEC notes that one of the benefits of the Internet is that "companies can make information available to investors quickly and in a cost-effective manner."[2]

Finally, allowing web site disclosure of the CMR in lieu of EDGARizing the Report would alleviate some of the cost concerns raised by the SEC's rule proposal. In addition, the Society notes that formatting the Report and independent Audit into eXtensible Business Reporting Language (XBRL) would not be required if these documents are provided on the issuer's website rather than as an exhibit to the Annual Report. If the SEC does require the CMR and Audit to be included as an exhibit to the Annual Report, the Society would urge the SEC to not require XBRL formatting, as the information in

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[1] Commission Guidance on the Use of Company Web Sites, 73 CFR 45,862 at 45,863 Release No. 34-58288 (August 1, 2008), available at: http://www.sec.gov/rules/interp/2007/34-58288fr.pdf ("SEC Web Site Release").

[2] Id.

these documents do not lend itself readily to XBRL formatting and would be an added expense to issuers with little benefit to investors.

Effectiveness of the Rule Should be Phased In to Allow Time for the Department of State to Provide the Required Guidance and Maps of Conflict Areas

Section 1502 (c) (1) of the Dodd-Frank Act requires the Secretary of State to submit, by January 11, 2011, a plan to certain congressional committees that in part would "give guidance to commercial entities seeking to exercise due diligence on and formalize the origin and chain of custody of conflict minerals used in their products...." Subsection (2) requires that in the same time period the Secretary of State provide a "map of mineral-rich zones, trade routes, and areas under the control of armed groups" in the DRC countries. We are not aware that this has been done. Without such information, companies will not be able to determine if the minerals they use come from conflict areas or how to properly get information on the origin of such minerals from their suppliers and trace their ownership through the many intermediaries between the mine and the ultimate supplier.

The Dodd-Frank Act also requires that issuers provide conflict minerals disclosure beginning with the issuer's first full fiscal year that begins after the SEC's final rules are promulgated (which may not be later than April 15, 2011). For companies whose fiscal year ends in June 2011, this would mean their first report would be due for the year ended June 2012; such companies would therefore be required to determine whether products made during their 2011 fiscal year contained conflict minerals—and that could require those companies to begin identifying the sourcing of such minerals going back to 2010. As noted above, companies will need guidance from the Department of State to do their due diligence on the origin and chain of custody reviews.

For the foregoing reasons, the Society recommends that, if possible, the effective date of the rule be phased in over time. In no event should the required disclosure and the submission of a Conflict Minerals Report and Audit be due until at least one year following the time the map and other guidance is provided by the Department of State. In addition, we would suggest that the required disclosure and reports be phased in by industry, so that industries with less experience in minerals extractions and production have more time to establish the necessary supply chain due diligence.

The SEC Should Exempt Smaller Reporting Companies From Conflict Minerals Disclosure

Even if a phased-in approach to reporting is adopted by the Commission as suggested above, the Society requests that smaller reporting companies be exempt from Conflict Minerals Disclosure. Given the unknown but expected significant costs in complying with such disclosure, the Society believes that smaller reporting companies will be less able to compel their suppliers to provide the certifications they will need in order to comply with the rules. Moreover, even a reasonable country of origin inquiry may be expensive to conduct. Until more information is known about how the rules will be implemented, and what the attendant costs of producing a CMR and having it certified in

an independent Audit will be, the Society believes it is appropriate to exempt smaller reporting companies from this reporting requirement.

Summary

We respectfully request that the SEC modify the proposed rules as disclosed above. We appreciate the opportunity to comment on this important proposal and would be happy to provide you with further information to the extent you would find it useful.

Respectfully submitted,

/s/ Neila B. Radin

Chair, Securities Law Committee
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