NIOTAN

March 21, 2011

Ms. Mary L. Schapiro
Chairwoman
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Proposed Rules to Implement Section 1502 (Conflict Minerals) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (S7-40-10).

Dear Chairwoman Shapiro:

I write regarding the SEC's draft rule addressing Section 1502 of the Dodd-Frank Act, with respect to conflict minerals. I wish to thank the SEC for finding the time to meet with me recently. As the CEO of Niotan, Inc., a tantalum-processing company based in Nevada, I strongly support the Act. Prior to the law's enactment, I met on various occasions with members of both the House of Representatives and the Senate and their staff to support legislation designed to address the conflict minerals problem. I also submitted a formal letter of support for the draft conflict minerals legislation sponsored by Congressman Jim McDermott (D-WA).

I would like to highlight some additional means by which the SEC can strengthen its rule-making that were not included in my first letter on this matter of January 30, 2011. The purpose of the legislation is to target minerals that are, in fact, funding conflict. The draft rule uses the term "conflict minerals" to refer to all cassiterite, wolframite, gold, and tantalum in the world, regardless of its origin and relationship to conflict actors. This reference places a reputational taint on these entire industries. In addition, it makes it highly challenging for companies in these industries to communicate effectively with investors and the public. Under the draft rule, if a company used covered minerals that are untainted by conflict, and it wanted to highlight this positive result, it could say only that it uses "conflict minerals that are DRC conflict free." Such a phrase would be confusing and virtually non-intelligible to both investors and the public. It would be preferable for cassiterite, tantalum, gold, and wolframite simply to be called "covered minerals," and, as I mentioned in my previous letter, the report required if these covered minerals are mined in Central Africa should be the "Covered Minerals Report."

If these minerals are, in fact, connected with conflict actors, then, and only then, should they be called "conflict minerals." If they are not connected with conflict, they should be called "conflict free." This would fulfill the objective of the Act, and permit companies which have a clean audit to state the outcome with language that can be clearly understood by investors and the public. Such a change in the language would also avoid unnecessarily tainting entire industries. We would like to emphasize that in suggesting such changes in terminology, we are not suggesting any changes in the standards of due diligence or the audit.

Additionally, it would be helpful if the SEC would provide general guidelines or principles for due diligence. Namely, it is important that no single methodology or institution hold a monopoly on how such due diligence is conducted. Such a monopoly could stifle innovation and raise the cost of compliance, and create a risk that material that does not support conflict is needlessly excluded from the supply chain.

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For instance, tagging is only one means through which effective due diligence can be carried out. It is unclear that any tagging system -- which some covered companies believe is the only option the SEC is certain to accept -- will be available by the time the rule is intended to become effective. The Rwanda Government is now considering halting all exports of tantalum, wolframite, and cassiterite because the tagging system has not been finalized. Similarly, exports from the DRC's Katanga province -- which is not located in the conflict zone -- cannot be utilized by the electronics industry due to delays in implementing tagging. Such delays penalize the livelihoods of miners and their families. The lack of resolution on a tagging system also prevents investment in mines that are indisputably in non-conflict zones or countries.

Direct investment in mines would avoid the need for tagging, as the minerals would move through a much shorter supply chain. Mechanisms such as the BGR mine audit system provide a means to ascertain the sources of minerals where there is direct investment in mines. Other programs, such as the systems in place to meet the requirements of the E.U.'s illegal timber law, also may provide guidance to companies as to alternative and sufficient forms of due diligence. In short, alternative forms of due diligence should be available to issuers so long as they are effective.

If the SEC is unable to provide guidance on alternative due diligence methodologies that would meet the due diligence requirement, it would be helpful if the SEC could nonetheless create general principles for due diligence. These principles could include a due diligence system that identifies the complete chain of custody, which can be verified by reliable third parties.

Because due diligence is complex nd granular, and there is much confusion regarding what companies are expected to do, the SEC should consider setting up an expert committee consisting of auditors and others with expertise on due diligence to advise on good practice. Such a committee could produce good practice guidelines that would provide helpful and detailed guidance to the various industries involved. The committee's guidelines could evolve over time to reflect the covered industries' increasing capacity to carry out in-depth and accurate due diligence. This would provide issuers with sufficient certainty regarding what is expected of them that they could source from Central Africa without fear of not meeting the due diligence requirement.

Niotan greatly appreciates the effort that the SEC has put forth to promulgate a rule that will achieve the goal of the Dodd-Frank Act -- stemming the flow of mineral-related funds to conflict actors, and thus helping to end the conflict in the DRC. I hope that these comments will be useful in achieving that goal. If you have any questions, please do not hesitate to contact me at (775) 283-0226.

Sincerely,

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Niotan, Inc.

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