United States Department of State

Washington, D.C. 20520

MAR 24 2011

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

Dear Ms. Schapiro:

Following on our letter of January 24, 2011, and in connection with the Department of State's formal consultation role under section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), we hereby submit our official comments on the draft regulations on implementing section 1502's requirements related to due diligence. We again wish to congratulate you and your staff for commendable work in responding to this complex task.

Additional comments responding to the questions raised in your draft regulations are attached hereto as an Annex. In addition to the specific answers to your questions, we would like to make several recommendations and observations of a more general nature:

- It is vital that companies perform meaningful due diligence. The Department holds the view that reporting companies must begin immediately to structure their supply chain relationships in a responsible and productive manner to encourage and ensure legitimate, regulated, conflict-free trade that does not include possible conflict minerals nor contribute to human rights abuses.

- We understand the difficulty in prescribing a specific due diligence standard. We would urge you, however, to direct issuers to use as a reasonable basis the guidance recently issued by the Organization for Economic Cooperation and Development (OECD) and also by the United Nations Security Council Democratic Republic of the Congo (DRC) Sanctions Committee's Group of Experts (UNGOE), or the five-step framework at the core of these systems. The five-step framework has particular significance in light of its development by inclusive and international multi-stakeholder processes (in the OECD case) and the decision of the UN Security Council to support the framework as a factor when considering targeted sanctions. The more

varied the due diligence practices are that issuers may adopt, the more difficult the results will be to evaluate and the more difficult they will be to verify by independent third parties.

- The Department supports the Commission's proposed use of a reasonable country of origin inquiry (RCOI) standard. However, to uphold the legislation's goals, we urge that the Commission define or provide further guidance regarding what constitutes an RCOI. In general, information related to a mineral's origin is often available within the supply chain, but without a clear, uniform standard for issuers to guide their conduct of the RCOI, there is a risk that the quality of information-gathering and disclosure will suffer, that investors will struggle to assess the reliability of the disclosed information, and that, in some cases, due diligence may not be conducted when it otherwise should.

- While the scope of the Act concerns only minerals originating from the DRC and adjoining countries, the Department intends to encourage companies and other stakeholders to scrutinize their full supply chains and report on their due diligence steps even if they believe the covered minerals originate outside the region. By establishing uniform expectations across the global supply chains for these minerals, it will be possible to help avoid imposing higher costs on legitimate minerals from the region.

  We realize implementation of these due diligence actions will take time and may be challenging for many companies, particularly as many of the mechanisms needed to facilitate transparency for in-region sourcing are being developed. We intend to encourage companies that source minerals originating in the DRC and adjoining countries to engage with the U.S. Government, with host government authorities, and other stakeholders to help establish credible and effective mechanisms for due diligence and monitoring in the region. We would encourage companies to make public these positive efforts, including participation in or any support given to pilot in-region sourcing initiatives and industry-wide smelter validation efforts, such as that currently being implemented by the electronics industry.

- We urge the SEC to set forth final regulations that establish consistent guidelines across the four conflict minerals and for all categories of reporting companies, production methods, or end use industries. Differences in treatment (such as for recycled materials) could facilitate loopholes that

do not effectively contribute to a reduction in minerals trade contributing to conflict and human rights abuses.

- Finally, we would recommend that the SEC consider a single start date for the reporting period for all companies, regardless of their particular fiscal year. Such a step would clarify the reporting obligations, level the playing field among the various companies, and provide a clearer date of implementation for due diligence and related initiatives in the region.

We thank you in advance for your consideration of these issues and the remainder of our comments. We ask your staff to contact Brad Brooks-Rubin of the Department of State's Bureau of Economic, Energy and Business Affairs at (202) 647-2856, or Brooks-RubinBA@state.gov, in order to discuss any specific issues.

Sincerely yours,

Robert D. Hormats
Under Secretary of State for
Economic, Energy, and Agricultural Affairs

María Otero
Under Secretary of State for
Democracy and Global Affairs

U.S. DEPARTMENT OF STATE RESPONSES TO REQUEST FOR COMMENT

Step One – Determining Issuers Covered by the Conflict Mineral Provision (page 12)
Issuers That File Reports Under the Exchange Act
Our proposed rules would apply to any issuer that files reports with the Commission under the Exchange Act, provided that the issuer is a "person described" under the Conflict Minerals Provision.

1. Should our reporting standards, as proposed, apply to all conflict minerals equally?

Yes; treating the minerals differently vis-à-vis the reporting standards would weaken efforts to promote scrutiny.

4. Should our rules apply to foreign private issuers, as proposed? Should we exempt such issuers and, if so, why and on what basis? Should the rules otherwise be adjusted in some fashion for foreign private issuers?

The rules should apply to foreign private issuers as proposed equally in order to maximize the scope of their application and to avoid favoring foreign issuers over U.S. issuers.

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?

Excluding certain classes or sizes of company would sharply reduce the incentive for issuers that use any of the four named conflict minerals to coordinate and develop effective industry-wide mechanisms to assist them in discharging their due diligence obligations. The disclosure provisions and requirements should be the same for smaller companies as for other companies to take account of their purchases of products using the four named minerals.

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?

While a broad application of the disclosure requirements would best promote transparency in the minerals trade, we agree with the SEC's conclusion that it may not be practical or consistent with the legislation to mandate this expansion of those subject to the reporting requirement through the framework laid out by Section 1502. The Department would, however, encourage companies

not subject to Section 1502 to disclose voluntarily their due diligence measures. The due diligence guidance developed by the OECD and the UN Security Council DRC Sanctions Committee's Group of Experts should be of interest to all companies regardless of their SEC filing status.

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?

The Department recognizes that many issuers have predicted competitive disadvantage as one outcome of the regulations. The Department also recognizes that the more broadly due diligence is conducted and encouraged of suppliers, the more likely there will be a leveling of expectations and costs across the global supply chains, thereby lessening the impact on affected issuers and the U.S. market. As much as possible, the Department believes it is key to encourage due diligence throughout the supply chain to create this dynamic. To this end, we intend to continue encouraging all companies to exercise due diligence, regardless of their SEC filing status.

"Manufacture" and "Contract to Manufacture" Products (page 17)

The Conflict Minerals Provision applies to any person for whom conflict minerals are necessary to the functionality or production of a product manufactured by that person.[51] *It appears, therefore, that the Conflict Minerals Provision was not intended to apply to all issuers, but was intended to apply only to issuers that manufacture products. In this regard, our proposed rules would likewise apply to reporting issuers that manufacture products.*

9. Should we define the term "manufacture?" If so, how should we define the term?

The Department agrees with the Commission's conclusion regarding how the definition should be understood. Reviewing the initial set of reports submitted under the regulations should provide an opportunity to determine whether this approach proves inadequate or if loopholes become apparent as a result of not further defining the term at this time.

However, if a decision is made to define it, the term should be defined in a way that would be consistent with and not undermine the five-step framework underpinning the OECD's and the UN Group of Expert's due diligence guidance.

10. Should our rules, as proposed, apply both to issuers that manufacture and issuers that contract to manufacture products in which conflict minerals are necessary to the functionality or production of those products?

The Department agrees with the proposed approach. Not applying the requirements to issuers that contract to manufacture products could create an unacceptable loophole in the regulations' implementation.

12. Is it appropriate to consider issuers who sell generic products under their own labels or labels that they establish to be contracting the manufacture of those products as long as those issuers have contracted with other parties to have the products manufactured specifically for them? If not, what would be a more appropriate approach?

The Department holds that it would be appropriate to consider such issuers to be contracting the manufacture of such products in order to prevent possible loopholes in implementation. The Department agrees with the Commission's stated intention to apply the rules to issuers that sell generic products under their own labels or labels that they establish.

Mining Issuers as "Manufacturing" Issuers (page 21)

As a separate but related issue, our proposed rules would consider issuers that mine conflict minerals, including issuers that mine gold, to be manufacturing those minerals, and issuers contracting for the mining of conflict minerals to be contracting the manufacturing of those minerals.

13. Is it appropriate for our rules, as proposed, to consider reporting issuers that are mining companies as "persons described" under Section 1502? Does the extraction of conflict minerals from a mine constitute "manufacturing" or "contracting to manufacture" a "product" such that mining issuers should be subject to our rules?

14. Alternatively, should a mining issuer not be viewed as manufacturing a product under our rules unless it engages in additional processes to refine and concentrate the extracted minerals into salable commodities or otherwise changes the basic composition of the extracted minerals?

15. If so, what transformative processes, if any, should mining issuers be permitted to perform on conflict minerals before our proposed rules should consider them to be manufacturing products to which conflict minerals are necessary?

The Department agrees that issuing mining companies should be covered. While we understand that few issuing mining companies are currently active in the DRC with respect to the four named conflict minerals, which remain primarily mined by artisanal miners, mining companies play a potentially critical role in due diligence given their place at or near the beginning of the supply chain.

16. Should our rules define the phrase "necessary to the functionality or production of a product," or is that phrase sufficiently clear without a definition? If our rules should define the phrase, how should it be defined?

The Department would support the Commission's proposed approach. Again, reviewing the initial set of reports submitted by issuers should provide an opportunity to determine whether this approach proves inadequate by allowing issuers to adopt too narrow a definition.

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?

Although Section 1502 does not require it, the Department intends to encourage companies to establish and disclose systems for the conduct of due diligence measures across their supply chain, regardless of the country of origin, in part to mitigate the unintended negative economic impacts on the DRC and adjoining countries and in part to prevent additional loopholes. Further, reviewing the initial set of reports submitted under the regulations should provide an opportunity to determine whether this approach proves inadequate.

27. Should we, as proposed, require issuers to describe the reasonable country of origin inquiry they used in making their determination that their conflict minerals did not originate in the DRC

countries? Is a separately captioned section in the body of the annual report the appropriate place for this disclosure?

Companies should be required to describe the nature of their reasonable country of origin inquiry. Doing so will increase transparency, allow for interested stakeholders to assess the strength of the inquiry, and help disseminate to other issuers best practices for understanding the source of inputs.

28. Should we require, as proposed, that an issuer maintain reviewable business records if it determines that its conflict minerals did not originate in the DRC countries? Are there other means of verifying an issuer's determination that its minerals did not originate in the DRC countries? Should we specify for how long issuers would be required to maintain these records? For example, should we require issuers to maintain records for one year, five years, 10 years, or another period of time?

The Department would recommend that relevant records be retained for a minimum of five years, as recommended by the OECD, in order to provide sufficient transparency and enable sufficient evaluation.

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?

The Department views a reasonable country of origin inquiry as an appropriate standard for determining whether more exhaustive due diligence is required, particularly as the Commission has structured it with the burden of proof falling on an issuer that believes its conflict minerals to originate outside the DRC and adjoining countries. However, we urge the Commission to define or provide further guidance regarding what constitutes a reasonable country of origin inquiry. Additional guidance on a reasonable country of origin inquiry should be based on analogous elements within the OECD and UN Group of Experts guidance. Within these documents, we would highlight among other elements the identification and disclosure of the processor that produced the refined metal used by the company, and verification of processors' chain of custody documentation, either through a review of records by the issuers or by an independent third party.

34. Should we not require any type of inquiry? For example, would it be appropriate and consistent with the Conflict Minerals Provision to permit an issuer to make no inquiry, so long as it disclosed that fact?

Reasonable inquiry should be required. In the Department's view, given the known potential for conflict minerals purchases to finance violent armed groups and role of the reasonable country of origin inquiry in the implementation of the legislation, failing to make any inquiry at all would be unlikely to be considered "reasonable."

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?

Ultimately, the goal is that customers should be able to rely on the representations of suppliers further "upstream," provided that the customer takes appropriate internal and independent auditing measures and due diligence steps set forth by the OECD and UN Group of Experts. Consistent with the guidance set forth by the OECD and UN Group of Experts, not every company at every step of the supply chain should be required to replicate the same due diligence steps back to the mine source, provided they are able to rely on the reasonable efforts of their suppliers to obtain this information and have conducted complementary measures indicated by the OECD and UN Group of Experts. We recommend that the Commission indicate that representations be based on documentary evidence, rather than oral statements.

The Department intends to provide continuing guidance to companies with the expectation that the processes for conducting a reasonable country of origin inquiry and due diligence will likely continue to evolve and develop.

36. Should any qualifying or explanatory language be allowed in addition to or instead of the reasonable country of origin inquiry standard, as proposed, regarding whether issuers' conflict minerals originated in the DRC countries? For example, should issuers be able to state that none of their conflict minerals originated in the DRC countries "to the best of their knowledge" or that "they are not aware" that any conflict minerals originated in the DRC countries?

No. Allowing ambiguous declarations would undermine the reasonable country of origin inquiry process by effectively limiting the inquiry required in order for issuers to conclude their minerals did not originate in the DRC or adjoining countries.

The Department encourages companies that source minerals originating in the DRC and adjoining countries to engage with the Department and with host government authorities to help establish credible and effective mechanisms for due diligence and monitoring in the region, such as through participation in or support to pilot in-region sourcing initiatives and industry-wide smelter validation efforts. We encourage reporting companies to make these efforts public, and encourage them to be included in the description of efforts taken to effectuate the reasonable country of origin inquiry, but do not believe they should be permitted instead of reporting on such inquiry.

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?

Issuers should only be able to list their products as "DRC conflict free" if they show that the conflict minerals used in these products a) do not come from the DRC or adjoining countries, or b) do not directly or indirectly support armed groups in these countries. If issuers are unable to determine the source of the minerals, they should be able to state as much, but not that the material is conflict-free.

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 Department recommends that issuers disclose the country of origin and the efforts undertaken to identify the mine of origin for all minerals sourced from the DRC and adjoining countries, whether or not the minerals are determined to be DRC conflict free. Reaching a sound determination of "DRC conflict free" would likely entail at least approximate knowledge of the mine of origin, as generally indicated by the OECD guidance. Additionally, reports that offer information about mine sites that are determined to be conflict free will help refresh the body of knowledge for companies, governments, and NGOs operating in the region and will assist third parties in verifying corporate claims about the status of the minerals used. Minerals sourced from outside the region do not need this level of description.

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?

Reports from companies whose minerals originated in the DRC countries should make every effort to include that level of specificity in order for the rules of Section 1502 to be consistent with the OECD and UN Group of Experts due diligence guidance. Data like these should ultimately form part of "best practices" for reporting companies.

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?

It is unclear how a reasonable conflict minerals determination can be made without due diligence given the complexity of the region and the risk of fraud. A description of the due diligence used is appropriate and would contribute to greater global understanding of best practices.

The Department believes there are basic due diligence steps that every issuer should take, regardless of its particular circumstances, in order to make reliable supply chain determinations and to gather the information required to be included in the Conflict Minerals Report. The rules should direct companies to use as a basis the OECD and UN Group of Experts due diligence guidelines. Both sets of guidance were subjected to a wide range of scrutiny and input from stakeholders in a number of industries and countries.

51. Should different due diligence measures be prescribed for gold because of any unique characteristics of the gold supply chain? If so, what should those measures entail?

The Department would recommend against making an explicit distinction between the expectations concerning gold and the other named conflict minerals. While the supply chain for gold is more complex, it is also of particular concern for armed group activities in the DRC.

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?

See comment to question 35.

53. Is our approach to issuers that are unable to determine that their products did not originate in the DRC countries appropriate?

Yes.

54. Should our rules prescribe any particular due diligence standards or guidance?

As stated above, it is our view that the regulations should direct issuers to the due diligence guidance developed by the OECD and UN Group of Experts.

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 stated above, it is our view that the regulations should direct issuers to use the due diligence developed in the OECD and UN Group of Experts guidance documents.

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)?

We hold that companies can begin implementation of the regulations immediately. It is clear that the standards for reasonable reporting will evolve further over time as capacity and information gathering improves. Although the Commission could and should make clear this expectation of evolution, this should not be a cause for delay.

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 Commission should establish a single start date for the reporting period for all companies, regardless of their particular fiscal year, to clarify the reporting obligations, level the playing field among the various companies, and provide a clearer date of implementation for due diligence and related initiatives in the region.

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?

In light of the nature in which the covered minerals are often used in products, i.e. often in very limited quantities, such a change could have a significant impact on the proposed regulations. A de minimis threshold should not be considered under current circumstances.

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?

The Department holds that allowing recycled conflict minerals to be definitively labeled as "DRC conflict free" could create a substantial loophole. We recognize that the extensive use of recycled gold makes this a significant category of minerals. Absent further review and evaluation of the impact of the regulations, however, we recommend that reporting should be permitted that identifies such source material solely as "recycled or scrap" and not "DRC conflict free."

Reviewing the initial set of reports submitted under the regulations should provide an opportunity to determine whether this approach proves adequate. Also, we urge the Commission to define the terms "recycled" and "scrap" (perhaps drawing from the OECD's definition) to help prevent development of a loophole that would allow companies to avoid reporting country of origin, processing facilities, etc.

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?

As stated above, the Department holds that the risk identified is significant. We urge the Commission to define the terms "recycled" and "scrap" (perhaps drawing from the OECD's definition) to help prevent the development of a loophole that would allow companies to avoid reporting country of origin, processing facilities, etc.