

Reference: S7-40-10

January 13, 2011

Dear Sir or Madam:

These comments are in regard to the Conflict Minerals section (1502) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. My comments apply to all the minerals covered by the regulations, but the problems are particularly apparent in gold. By way of background, the consulting company I founded, Materials Management Corp., has supported the precious metals and nonferrous metals industries for over thirty years.

I am concerned that the regulations as proposed will (a) diminish the status and might unfairly affect the market for metals derived from scrap rather than from mines, (b) compromise the security and competitive position of companies in the supply chain through the audit process, and (c) result in undue expense from inadequately defined audit standards.

(a) With regard to scrap, the proposed regulations place metals derived from scrap at a disadvantage to those from conflict-free mines. Manufacturers that characterize their metal as conflict-free have no further reporting requirement. If a manufacturer uses metal derived from scrap, the origin(s) of the metal contained might be unknown and the manufacturer will be obliged to report its due diligence to the SEC. Consumers will opt to avoid filing reports to reduce costs and to minimize public notice, so the proposed regulations create a strong bias in favor of mined material.

In the case of gold, a preference for mined metal over gold from scrap overlooks the current structure of the gold market and how the industry has operated for centuries. Gold from scrap has always been a major supply source. Recently, United States mine production has been declining whereas gold produced from scrap has been increasing—from about one third in years past to almost half today (<http://minerals.usgs.gov/minerals/pubs/commodity/gold/mcs-2010-gold.pdf>).

Requiring companies to report due diligence procedures for gold derived from scrap—hence causing a preference for mined gold— will have no effect on the militia groups in the DRC. Any DRC gold contained in recycled scrap will have already been paid for, so reuse would generate no earnings for the DRC. Indeed, the more recycled gold we use, the less revenue to the DRC militias.

To avoid discriminating against recycled gold and distorting the market, I would urge the Commission to permit manufacturers to characterize recycled gold as being DRC conflict-free.

(b) With regard to confidentiality of audits, the competitive position of metals companies—like any other companies—demands confidentiality of suppliers and customers. Auditing a company's metals supply chain will systematically disclose and examine its sources and the suppliers to its sources. Even with assurances of confidentiality, companies will be reluctant to disclose this information. Without such assurances, it will be near to impossible.

To assure confidentiality, audits should be made available to the Commission but not to the public. Details of the supply chain should be in an appendix separate from the due diligence audit. Security measures should include blocking access through Freedom of Information Act and similar requests.

(c) With regard to audit standards, without further definition, auditors might apply excessive due diligence requirements to be “on the safe side” of compliance. These standards might escalate higher than the Commission requires and could prove unreasonable. For example, a United States computer manufacturer might import components manufactured or assembled in the Philippines. The components might contain gold-plated lead frames from Singapore, tantalum capacitors from Germany and tin solder from Malaysia. Each of those companies would source their “conflict” metals through their own supply chain. How far up various supply chains will an auditor be required to trace the possible occurrence of conflict minerals?

To avoid undue expense and complexity of audits, the Commission should clarify the auditor’s task.

Sincerely,
Michael Riess

Materials Management Corp.
818 Lake Avenue
Greenwich, CT 06830-3029