



CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

TOM QUAADMAN
VICE PRESIDENT

1615 H STREET, NW
WASHINGTON, DC 20062-2000
(202) 463-5540
tquaadman@uschamber.com

July 18, 2011

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

Re: Proposed Rules on Conflict Minerals Release No. 34-63547; File No. S7-40-10, RIN 3235-AK84

Dear Secretary Murphy:

The U.S. Chamber of Commerce is the world's largest business federation, representing more than 3 million businesses and organizations of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. To achieve this objective it is an important priority of the CCMC to advance strong corporate governance structures and effective disclosure regimes. The CCMC welcomes this opportunity to comment on the Proposed Rules on Conflict Minerals ("proposed rules") proposed by the U.S. Securities and Exchange Commission ("SEC").

On February 28, 2011, the Chamber filed with the SEC a comment letter on the proposed rule. Since that time several events have occurred that directly and significantly impact the proposed rule, including:

- 1) The President's executive order of July 11, 2011 on independent agency rule making and economic analysis; and
- 2) The growing awareness of the impact of the proposed rule upon vendors of public companies.

Accordingly, the CCMC recommends that at a minimum the SEC should open the rule for a second comment period and for the SEC to reconsider the proposed

Ms. Elizabeth M. Murphy
July 18, 2011
Page 2

rules under the conditions of the July 11, 2011 executive order. This reconsideration should of course assess how the proposed rule will promote market efficiency and capital formation, as well as its impacts upon non-public companies and businesses.

The CCMC's concerns are provided in more detail below.

Discussion

The Chamber supports the fundamental goal of preventing the exploitation of conflict minerals for the purpose of financing human rights violations within the Democratic Republic of Congo.

However, in the February 28th comment letter, the CCMC noted a series of fundamental flaws with the proposed rule, including a failure to meet the mandates of Section 23 (a) (2) of the Exchange Act, which requires consideration of the proposed rule's impact upon competition, the burdens placed upon business and the difficulties of compliance. Because of these concerns, the CCMC requested that the SEC voluntarily submit the proposed rule for an Office of Information and Regulatory Affairs ("OIRA") regulatory review. The Chamber also requested that the proposed rule be withdrawn and that the potential costs, supply chain complexities and other practical obstacles to implementation be more fully analyzed before new rules are proposed.

The CCMC continues to stand by those concerns and recommendations and believes that additional events need to be taken into account as the SEC deliberates the proposed rule.

I. Executive Order

On July 11, 2011, President Barack Obama issued an Executive Order¹ requesting independent agencies to adhere to the cost savings and burden reducing principles embodied in Executive Order 13563.

¹ The Executive Order of July 11, 2011 requests independent agencies to comply with Executive Order 13563, issued by President Obama on January 18, 2011. Executive Order 13563 also amplifies the provisions of Executive Order 12866 issued by President William J. Clinton on September 30, 1993.

For the purposes of the proposed rule, Executive Order 13563 places upon agencies the requirement, when promulgating rules to:

- 1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to justify);
- 2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;
- 3) Select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages; distributive impacts; and equity);
- 4) To the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and
- 5) Identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made to the public.²

Additionally, Executive Order 13563 states that “[i]n applying these principles, each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.”

In the February 28th comment letter the Chamber raised a series of concerns regarding the proposed rules. Amongst those concerns was the complexity of the issues and the compliance difficulties created, as well as the failure of the SEC to appropriately estimate the costs and impacts of the proposed rule upon businesses

² Executive Order 13563

Ms. Elizabeth M. Murphy
July 18, 2011
Page 4

and the economy. Those were among the reasons for the Chamber's request for the rule to be withdrawn.

We continue to believe there was more than adequate reason to justify withdrawing the proposed rule in February, and recent events have only made that justification stronger. The July 11, 2011 Executive Order requests independent agencies to be much more rigorous and diligent in identifying burdens, costs and complexities in developing a rule. Agencies should then choose the least burdensome approach.

This proposed rulemaking has a wide impact upon the vast swaths of the American economy and manufacturing base. A rigorous and thorough analysis, as contemplated by Executive Order 13563, should be undertaken by the SEC and we again request that the SEC submit the proposed rule for OIRA review. Once those costs and burdens are more fully understood, then a working group should be established to address the various issues that need to be addressed by the proposed rule making.

II. Impact upon Vendors of Public Companies

As was stated in the Chamber's February 28, 2011 comment letter, the proposed rule poses a number of supply chain complexities that must be addressed. These concerns have grown with time.

The SEC estimated that the disclosures required by the proposed rule would impact 1,199 to 5,551 companies, with compliance costs of \$71,243,000. Manufacturers, or other companies subject to these disclosures, may, individually, have thousands of vendors, many of whom may be private companies that are involved in their supply chain. Some have already begun to have their vendors certify compliance with the proposed rule before it has been finalized. This has started to spread the compliance costs and burdens throughout the economy, upon hundreds of thousands of businesses that are not subject to the jurisdiction of the SEC. These strictures will drive up costs and burdens for vendors. It is also unclear how the independent auditing requirements will be applied and if those requirements will in turn be imposed upon vendor businesses.

Ms. Elizabeth M. Murphy
July 18, 2011
Page 5

While some of this information is anecdotal, it should be taken as a warning flag to the SEC of the gross underestimate in the application and cost of the rule. We would recommend that the SEC hold a roundtable to better understand the supply chain impacts and consequences on the American business community and economy as a whole. Unintended consequences that can have unforeseen broad based, costly impacts upon large sections of the markets are difficult in the best of times, but particularly concerning in the fragile state of the economy today.

Conclusion

The CCMC once again would like to thank the SEC for the opportunity to comment on the proposed rules. However, the CCMC has serious concerns regarding the complexities and burdens of the proposed rule and beliefs that more thorough analysis is needed, as well as a review as contemplated by the Executive Order of July 11, 2011.

The withdrawal of the rule, compliance with the President's executive order, rigorous examination of the costs and burdens, OIRA regulatory review, establishment of a working group and roundtable are all bold and necessary steps to better understand the issues and the benefits that can be derived by this rulemaking. At a minimum, the SEC should reconsider the proposed rule in light of the President's executive order of July 11, 2011 and hold a second comment period for those purposes.

We continue to look forward to working with the SEC throughout this process.

Sincerely,



Tom Quaadman