October 11, 2011

The Honorable Mary L. Schapiro
Chairman
Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090

Re: Conflict Minerals, File No. S7-40-10

We respectfully submit these comments regarding the proposed regulations to implement Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), which requires disclosures related to conflict minerals originating in the Democratic Republic of the Congo.

Section 1502 attempts to address the extreme levels of violence and the humanitarian emergency in the DRC. While the humanitarian underpinnings of the legislation are commendable, the proposed solutions contained in Section 1502 are incomplete; fully addressing the situation in the DRC requires more than value-chain verification by U.S. businesses. We do offer, however, the following suggestions to make the implementation of the regulations more effective and move the humanitarian crisis toward a lasting solution.

- The SEC should seize the opportunity to supplement its direct monitoring with whistle-blower support from the NGO community, whom are already interested observers. Although the SEC directly monitors compliance through corporation filings, its audit verification strategy can be improved by co-opting the NGO third-eye.
- It is important that the SEC clarifies any ambiguities surrounding definitions and standards, particularly with regard to audit. Presumably many of these vexing issues would have been tabled during the consultation stage when industry and NGOs were allowed to submit comments for consideration by the SEC. Undoubtedly clarity will reduce the overall cost of compliance and discourage the tendency to subvert the law.
- In its rule making, the SEC may find instructive the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. This guideline has been widely applauded as an outstanding outcome of a multi-stakeholder process. According to remarks by U.S. Secretary of State Hilary Clinton during the 50th Anniversary of the OECD Guidelines for Multinational Enterprises in May 2011, "… they do bring together labor, civil society, and business to create the broadest possible consensus behind them. This is truly the work of a global policy network in action." The guideline has been endorsed, among others, by the NGO community and the U.S. State Department.
- Congress should note that over the long term, coordinated pressure along the entire illicit value chain of conflict minerals would be more effective than a standalone intervention aimed solely at the extractive stage. For armed groups to purchase weapons, it may be necessary to launder part of the money from illicit sales that often involve human rights violation and crime. Therefore, additional remedial measures—such as supporting the global Anti-Money Laundering and Countering of Terrorism Financing (AML/CTF regime)—are indeed helpful. A good starting point would be to lobby state parties to domesticate the United Nations Convention against

Corruption as well as support the implementation of Financial Action Task Force (FATF 40+9) recommendations.

- Manufacturers should engage suppliers by enlightening them on how to best implement supply chain due diligence and third party verification. They can also clarify roles and expectations for suppliers as well as specify immediate and long-term implications for ongoing contractual agreements.
- Create a stronger platform to promote U.S./Africa engagement aimed at establishing political order and legitimate regimes in the sub-region. This can be realized through forging a tripartite coalition of governments including the Africa Union, NGOs, and businesses. USAID's new Community Mining Program, Friends of Congo, and Motorola Solutions for Hope are outstanding examples of ongoing initiatives by governments, NGOs, and businesses, respectively, to address the situation in the DRC from various angles. Harnessing the collective experience of these committed actors increases the likelihood of a breakthrough in the quest for a lasting peace.
- Countries neighboring the DRC must help reduce the conflict minerals trade. Without support from the sub-region, the core problems of the conflict will not be fully addressed. Tanzania, as a DRC country that exports its own gold, has a good reason to partner with the government of DRC to control this problem. Uganda and other complicit states must work towards increasing accountability regarding their involvement in the conflict minerals trade.

Resolving the multifaceted crises in the DRC requires coordination within the region and the support of the international community. Dodd-Frank is a good start at the international level. Unfortunately, the lack of a binding global due diligence regime leaves a gap in the fight to end the crisis. Activities of multinational enterprises, who do not face domestic constraints with regard to supply-chain due diligence, remain a challenge to mitigate conflict. This speaks to another reason why a coordinated global effort is an imperative. By working together to establish a lasting peace in the heart of Africa—a global public good—everybody wins: businesses reap cost savings driven by peace rather than by exploitation and opportunism, while locals enjoy peace and stability that are conducive to income growth and job creation.

Our complete article published October 2, 2011 on the Brookings website regarding this matter can be found here: http://www.brookings.edu/opinions/2011/1003_conflict_minerals_ayogu.aspx

Sincerely,

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