



October 13, 2011

Elizabeth M. Murphy, Secretary,  
Securities and Exchange Commission  
100 F Street, NE, Washington, DC 20549-1090

RE: Comments in Relation to the SEC Roundtable on October 18, 2011 (File Number S7-40-10)

Dear Ms. Murphy,

Thank you for the opportunity to participate in the roundtable and to provide further input on the proposed conflict mineral rules. We would like to begin by expressing our support for the SEC's rulemaking process as well as the humanitarian goals of Section 1502 of the Dodd-Frank Act. Global Tungsten & Powders Corp. (GTP), a privately held company, is a leading producer and supplier of tungsten powders and will be considered a tungsten processing facility (smelter) under the rules. GTP also recycles scrap containing tungsten and tantalum. GTP is located in Towanda, Pennsylvania and employs around 1,000 people. GTP adheres to its Code of Conduct and demands that its suppliers follow its supplier policy. Please refer also to our comments dated March 1, 2011.

We would like to offer the following comments to the SEC for consideration:

- Naming of Processing Facilities. The proposed rules do not clearly distinguish between responsible smelters and irresponsible smelters and require the naming of any "facilities used to process those conflict minerals" under (b)(1)(iii) of the new 17 CFR Parts 229 & 249, regardless of an individual smelter's due diligence efforts. Most reporting companies and their suppliers will generally have at least two sources of material or components for competitive and security reasons. If products from some processing facilities in the supply chain are "conflict free" but others are not, multiple facilities may be named (and shamed) in Conflict Minerals Reports if the reporting company is unable to reasonably determine that the minerals did not originate in the DRC or an adjoining country. We strongly believe that reporting companies should acknowledge the efforts of the suppliers that have, for example, implemented an internal management system or taken other appropriate measures to avoid financing armed groups in the DRC or adjoining countries. This is consistent with the principle of constructive engagement with suppliers outlined in the OECD guidelines. Further, it should not, in our opinion, be

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necessary for reporting companies to describe efforts to determine the mine or location of origin “with the greatest possible specificity” for processing facilities that do not source from the DRC or adjoining countries. **We suggest that (b)(1)(iii) include in the last sentence “giving due regard to the due diligence undertaken by each of the known processing facilities and the requirements set forth in this Instruction.” This creates an incentive for processing facilities and intermediate suppliers to cooperate with supply chain inquiries and to help avoid improper characterization of such companies as non-reliable.**

- Treatment of Scrap or Recycled Source Materials. We appreciate that the proposed rules will treat material obtained from recycled or scrap sources as conflict free under (b)(4). However, if material is identified as coming from recycled or scrap sources, this will trigger the furnishing of a Conflict Minerals Report and the corresponding private sector auditing requirements under the rules. This structure – as far as tungsten and tantalum are concerned – will increase costs and the administrative burdens associated with private sector audits and will force many more companies to undergo audits due to the prevalence of recycling and scrap processing in the United States. The structure will further create a disincentive to recycle or to source recycled material, making it easier to comply if ore is determined to originate from a mine outside the DRC region through the “reasonable country of origin inquiry.”

Recycling serves important public policy objectives. It has less environmental impact than mining and reduces price volatility and potential supply disruptions that could result from a high dependence on imports<sup>1</sup>. In 2009, an estimated 37% of U.S. tungsten consumption was produced from second life-cycle materials<sup>2</sup>. By comparison, wolframite output from the DRC is an insignificant source for the U.S. industry and represents only about 1.2 percent of worldwide tungsten mine output<sup>3</sup>. Treating material reasonably identified as second life-cycle materials as conflict free will not compromise or weaken the regulatory framework envisioned under Section 1502 as long as such determinations are made according to industry standards and technical norms. Scrap and recycled material come in a variety of forms including hard scrap, soft scrap, reclaimed powders, grinding sludge, ingot and chemical. Please refer, for

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<sup>1</sup> K.B. Shedd, "Tungsten Recycling in the United States," 2000. U.S. Geological Survey, available at: <http://pubs.usgs.gov/of/2005/1028/2005-1028.pdf>

<sup>2</sup> K.B. Shedd, "Mineral Commodity Summaries: Tungsten," Jan. 2010. U.S. Geological Survey, available at: <http://minerals.usgs.gov/minerals/pubs/commodity/tungsten/mcs-2010-tungs.pdf>

<sup>3</sup> DRC tungsten mine output was estimated at 650 metric tons in 2008, representing only about 1-2% of world total mine production which was estimated at 55,900 metric tons in 2008. See Thomas R. Yager, "The Mineral Industry of Congo (Kinshasa)," Feb. 2010. U.S. Geological Survey, available at: <http://minerals.usgs.gov/minerals/pubs/country/2008/myb3-2008-cq.pdf>, and K.B. Shedd, "Mineral Commodity Summaries: Tungsten," Jan. 2010. U.S. Geological Survey.

example, to the definitions of tantalum or tungsten scrap under the EICC protocol, OECD Due Diligence Guidance, industry trade association standards, etc. **We urge the SEC to place the “determination of conflict minerals as coming from scrap or recycled sources” together with the reasonable country of origin determination under (a). “Reasonable” scrap or recycled material determinations “according to industry standards and customary technical norms” should not automatically trigger a certified audit and such material should be treated as DRC conflict free in the absence of red flags.**

- Protection of Confidential and Proprietary Information. We believe that the rules should acknowledge the importance of confidential information for suppliers and, in particular, be taken into account in the context of the private sector audits. Intermediate suppliers will resist attempts by customers (i.e., reporting companies) to analyze their costs or to access sensitive information that is often contained in source of origin documentation. Supply agreements and related documentation contain information that suppliers regard as confidential and proprietary, including pricing formulas, specifications for material, capacities and capabilities, demand, financing and payment terms, etc. If a supplier perceives that the risks of disclosing such information outweigh the benefits of cooperating with requests from reporting companies, then the supplier will simply refuse to cooperate, even where the supplier exercises due diligence in its sourcing of raw materials. Third party audits of suppliers or processing facilities should be performed by independent entities to avoid favoritism and inconsistency in the application of the ruling and applicable standards. **We suggest that the provisions under the rules pertaining to inquiries or audits be revised to include statements that (i) due regard shall be given to confidential information of suppliers and the independence of supply chain auditors, and (ii) requests should be limited to that which is necessary to satisfy the requirements under the rules.** For example, if a supplier can demonstrate that minerals originated from Europe or South America pursuant to a reasonable country of origin inquiry, then it should not be necessary for that supplier to disclose the exact country or mine. Similarly, if a supplier can demonstrate that it processed and derived tungsten from the mineral ores “scheelite” or “ferberite” that clearly originated from outside the DRC or adjoining countries, then this should be the end of the inquiry. This approach will help reduce the cost burden without compromising the rules, facilitate cooperation by suppliers, and prevent opportunistic use of audits to obtain proprietary information.
- “Reasonable Representations” from Unaudited Suppliers. We believe that, where appropriate and in the absence of red flags, reporting companies should be able to rely upon representations from suppliers without them needing a third party audit

certification according to national or international standards. If a reporting company determines that a supplier or processing facility has implemented an appropriate internal management system in accordance with national or international standards or all inquiries confirm that appropriate measures have been taken to exercise due diligence, then this should be considered reasonable and sufficient in the absence of red flags. We believe that the *Know Your Customer Guidance* developed by the U.S. Department of Commerce under the Export Administration Regulations (EAR) would be a useful point of reference in this regard. The EAR - in the interests of protecting national security - require that companies consider whether there are any red flags or abnormal circumstances in a transaction and to not "self-blind," but it stops short of requiring customers to undergo an audit to fully legitimize a transaction. **Here, we believe that a "Know Your Supplier" framework similar to the guidance provided under the EAR would be appropriate for conflict minerals, particularly with respect to the "reasonableness" of a supplier's representations.**

- Treatment of Tolloed Material or National Stockpile Material. Some suppliers and processing facilities contract other companies to process scrap, second life-cycle materials, or ores containing tungsten and tantalum into raw materials suitable for use in the manufacture of products. The proposed rules are not clear on whether "tolled" material would be considered DRC conflict free if processed by another facility that is not an audited smelter or that has not implemented due diligence procedures of any kind. Because smelters generally comingle material, a company that supplies material for tolling would not know whether the returned material had been contaminated with material of an indeterminate origin during the tolling process, even though it knew that the original scrap or other material provided to the processing facility was conflict free. **We believe that tolled material received from processing facilities or suppliers should be treated as conflict free if the original material supplied was conflict free. Material procured from the U.S. national stockpiles or government agencies should also be presumed DRC conflict free. We urge the SEC to add a clarification statement taking these points into account in the definition of "DRC conflict free" in (c)(4).**

Thank you for your consideration.

Sincerely,



Dr. Andreas Lackner  
President & CEO