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Submitted electronically

Chairman Mary L. Schapiro
Commissioner Luis Aguilar
Commissioner Elisse Walter
Commissioner Troy Paredes

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re. Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Chairman and Commissioners,

The Chamber of Commerce (CoC) and the National Association of Manufacturers (NAM) have asserted that the proposed rules that would require companies to disclose what they are doing to get conflict minerals out of their supply chains are too complex and too expensive. Their concerns over implementation of Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act are out of step with measures the industry has already taken in this regard as well as with the progress being made in implementation on the ground in the DRC. Those concerns are also based on an unnecessarily high reading of the actual costs companies are likely to incur.

Congress enacted Section 1502 in July 2010 to address the urgent humanitarian situation in the eastern Democratic Republic of Congo (DRC) by curbing the trade in conflict minerals. One month later, in August of that year, over 300 civilians were raped by armed groups in an incident that took place in three villages located close to mining sites and documented in detail by the UN Joint Human Rights Office report documented. In reacting to the report, the UN Human Rights Commissioner noted that the most recent violence is just one example of the direct link between competition over access to minerals and a long series of human rights abuses including gender-based violence such as sexual slavery, forced recruitment, forced prostitution, and rape which has plagued the eastern part of the DRC for decades. That link has been proven beyond a doubt by the UN Expert Groups monitoring illicit exploitation in DRC for almost a decade and many others.[1]

Section 1502 is based on the recognition that companies from around the world, including in the United States, are buying minerals from DRC and using them to produce high-tech components that go into computers, mobile phones and other devices. The Section creates reporting

[1] The report of the UN Joint Human Rights office and statements by the UN High Commissioner for Human Rights can be found here: http://reliefweb.int/node/435593; Reports of the various UN Expert Groups on DRC, which report to the UN Security Council, can be found here http://www.un.org/sc/committees/1533/egroup.shtml

requirements for companies using conflict minerals originating in the DRC and adjoining countries. It requires companies to be transparent about so-called "conflict minerals due diligence," which means they must report what they do to make sure that the minerals they use do not finance conflict or human rights abuse.

To be fair, neither the CoC nor the NAM are saying the industry will not take action to deal with conflict minerals, but they are pushing back hard against the practical implications of Section 1502. The CoC has expressed concerns about the complexity of the rule and the ability of companies affected by this regulation to obtain reliable mineral source data "given the number of intermediaries involved in the supply chain." The NAM has objected to the potential cost, estimating that due diligence will cost billions of dollars to implement.

Both arguments have been made before and are exaggerated. Since the problem of Blood Diamonds become known almost a decade ago, consumers in the United States and the rest of the world have made it clear to industry that they do not want their hard-earned dollars to be passed down the value chain to suppliers who finance conflicts or profit from serious human rights abuses. A similar message has been heard loud and clear—and repeatedly confirmed—in the apparel industry, the food industry, and oil and gas industries, among others. Standards have been worked out and mechanisms put in place to deal with the particular demands in each industry. At the heart of these has been the idea that companies should conduct due diligence to make sure they are doing the right thing, or at least not doing the wrong things.

I. Concerns over complexity, while genuine, are out of step with industry progress.

The argument about complexity is both a genuine concern and entirely solvable. It is a genuine concern because every industry facing consumer and regulatory demands for ethically cleaner production processes has to adapt due diligence methods to meet the specific characteristics of their value chains. Other industries have done so with respect to anti-bribery regulations and there are an increasing number which are doing so to deal with the ethical challenges posed by global supply chains, including numerous institutional investors, leading supply chain monitoring efforts such as the Fair Labor Association, and the entire ethical and green trading movement.

In addition to progress made by industry more generally, the argument about complexity is also out of step with progress made by the specific industry at issue. The electronics industry has put in place the EICC Conflict-Free Smelter (CFS) program to audit mineral smelting companies, and now all four CFS mineral programs are in place. The tin industry has put in place a bag-and-tag minerals tracing initiative in Rwanda and some parts of Congo. International research and policy making at the Organisation for Economic Cooperation and Development (OECD), saw industry and civil society actors partner to map the value chain in conflict minerals from DRC in 2009 and 2010. A multi-stakeholder group made up of the Congolese government, the United Nations, local businesses, and civil society have recently started a validation program for mine sites, a first step towards establishing mineral traceability. The validation team visited 58 mine sites in North and South Kivu and is currently in the process of scoring mines along a conflict-free and non-conflict free spectrum (the report of the validation team will be completed by

October 2011). And U.S. companies are leading the way: Apple Inc., in conjunction with the Electronics Industry Citizenship Coalition, or EICC, has been able to map their supply chain down to the smelter. In all, Apple found 142 suppliers using one or more of the minerals at issue listed in 1502 (plus gold) in its products and 109 smelters used by these suppliers.[2] If Apple, one of the world's largest technology companies, is able to conduct this sort of a mapping, one would assume the complexities cited by the Chamber are not insurmountable.

II. Concerns over cost revealed as inflated when actual costs and existing due diligence mechanisms are taken into account.

The arguments about cost simply do not hold up. Much of the NAM estimates are based on the assumption that the infrastructure "does not exist" when, clearly, this is not the case. Given the work already underway or completed in mapping the DRC mining sector and tracing the commodity chains, the costs of due diligence to an individual company will be much lower than claimed. The NAM estimates are also based on an exaggeration of the due diligence requirement in 1502. What due diligence requires companies do is map those supply chains associated with certain minerals from certain countries. This is a focused and limited requirement. It is also one which should be easily met given existing company systems for assuring the quality of the components they buy. No credible electronics company leaves the quality of its components in doubt, and ensuring quality of components requires the same relationships with suppliers as envisaged by conflict minerals due diligence. This does not double the workload, it simply adds key questions and practical steps to the existing systems already in place at any company concerned about the quality of its product. The suggestion that companies will have to invest hundreds of millions of dollars in order to map anew their global supply of minerals makes no sense.

Concrete steps by individual companies will be required to ensure effective due diligence with respect to a company's supply of minerals from DRC. But individual companies will not bear this burden alone, they will not have to re-invent an expensive new method nor build whole new systems. There is still much work to be done to ensure that the smelters identified so far are conducting adequate due diligence upon which the end users in the United States will be able to rely in their reporting to the Commission. But the fact that due diligence is already emerging as a reality on the ground demonstrates that the costs are not nearly as great as the NAM estimates.

III. Companies' concerns over cost can be described in three categories of expenditures, none of which are great.

In practice, individual companies are looking at three kinds of costs to ensure due diligence is effective: (A) the cost of integrating conflict minerals due diligence into contracts with first tier suppliers, (B) the cost of independently verifying the information they report, and (C) the administrative costs of ensuring compliance.

[2] http://images.apple.com/supplierresponsibility/pdf/Apple_SR_2011_Progress_Report.pdf, pg 11.

A. The cost of integrating conflict minerals due diligence requirements into contracts with first tier suppliers is a one-time, minimal cost.

First, the integration of conflict mineral due diligence requirements into their contracts with first tier suppliers. The NAM estimates "the collective cost to change legal obligations across the 5,995 issuers affected is a minimum of $1.2 billion (2 hours x $50 per hour x 2000 suppliers x 5,994 (sic) companies)"[3] Of course, in reality, this would be a one-time cost. For a company like Apple, it would come to about $14,200 (142 suppliers x 2 hours x $50 per hour) and is presumably even less for smaller (i.e. most) companies. Section 1502 does not require changes to the legal obligations of all suppliers of every company, only those sourcing particular minerals from DRC and neighbouring countries and which are required to file with the SEC.

B. The cost of independently verifying the due diligence information gathered is likely lower than the number used by the SEC, and less than one quarter of the NAM estimate.

Second, companies should be implementing due diligence to independently verify the information they are receiving from suppliers, for example via traceability or certification schemes implemented by the industry. To make this effective, the SEC should require companies to conduct or contract out investigative social audits, not just systems audits. Both site audits and systems audits consist of standard methodologies. They are not expensive. The NAM contests the SEC's estimate of $25,000 per conflict mineral report suggesting it is more like $100,000.[4] This, too, is a skewed metric. My own consultations with consultants working in the social auditor sectors indicates that a site audit (e.g. a farm or factory audit or in this case a mine) consisting of 3-4 days in the field, and including a plan for remediation of problems detected, can run between $2000 – $3000 using local consultants. The cost for using expensive foreign consultants can be five to ten times as much. But even assuming the audit sector in Africa will need capacity building and therefore the initial involvement of higher-priced foreign consultants, the numbers per audit are likely to be less than SEC estimate - and less than a quarter of the NAM estimates – and those costs will decrease almost as soon as the first one is completed.

C. The administrative costs of ensuring compliance with the regulations will vary depending on the size and complexity of the company, ranging from one staff member dedicated to monitoring compliance, to a compliance team.

Finally, every company will have to invest in the administrative costs of ensuring compliance. This includes the ongoing monitoring of the supply chain, administering procurement and contracts, implementing remediation recommendations, conducting audits of their due diligence

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[3] Submission to SEC, Stephen Jacobs, *Senior Director, International Economic Affairs, National Association of Manufacturers*, March 2, 2011 Re: SEC Initiatives under the Dodd-Frank Act - Special Disclosures Section 1502 (Conflict Minerals) File Number S7-40-10; http://www.sec.gov/comments/s7-40-10/s74010-183.pdf p.24

[4] Submission to SEC, Stephen Jacobs, *Senior Director, International Economic Affairs, National Association of Manufacturers*, March 2, 2011 Re: SEC Initiatives under the Dodd-Frank Act - Special Disclosures Section 1502 (Conflict Minerals) File Number S7-40-10; http://www.sec.gov/comments/s7-40-10/s74010-183.pdf p.5

system and reporting to the SEC. It bears repeating that additional costs of monitoring procurement or the supply chain do not arise out of building and implementing a whole new system, but from the reasonable addition of dimensions to already existing quality assurance and contract administration work.

Beyond basic administration, a crucial step in ensuring compliance is assigning someone inside the company to the task of digesting the findings from the overall flow of due diligence information, including remediation recommendations and making sure that necessary steps are taken to respond to the findings.[5] From my own experience, and based on discussions with those who work in the oil and gas industry, I know that companies have met this challenge through a variety of standard methods: contracting out to consultants, redefining existing compliance job descriptions or hiring an additional staff person. For some apparel companies where the entire supply chain presents risks to its brand, this has meant hiring a team of people.[6] Somewhere in between these two cost structures is where conflict minerals due diligence will be found, but given the structure of the supply chain and the fact that the compliance risks are in one place, the likelihood is that the costs will be at the bottom end of the cost scale. This will differ from company to company, depending on the extent to which any particular company is exposed to the risk of conflict minerals in its supply chain and the extent to which the industry as a whole is able to put in place measures which enable the information and remediation that are necessary for due diligence by individual companies.

IV. Conclusion

Companies themselves are best placed to know about their supply chains and to take steps to solve problems they find, in other words: to conduct due diligence. Conflict minerals due diligence is designed to clarify for a business what it means to do the right thing when it buys minerals coming from a war zone, to enable a business to continue operations that meet minimum standards, and to suspend operations or withdraw when those standards cannot be met.

The Chamber argues that more time is needed to set up appropriate and reasonable infrastructure to track minerals to allow companies to engage in accurate reporting. That time has already passed, however, as companies have had well over one year to adjust their practices in anticipation of the final rule. Section 1502 is designed to enable consumers, investors, and regulators a level of transparency against which to assess a company's behavior. That can only happen when the rules are clear and regulators can do their job effectively. The time now is to put in place clear rules that tell companies what they have to do in order to ensure that this process of regulation continues to changing corporate behavior for the better, becomes more

[5] Taylor, Mark B., Luc Zandvliet and Mitra Forouhar (2009) Due Diligence for Human Rights: A Risk-Based Approach. Corporate Social Responsibility Initiative Working Paper No. 53. Cambridge, MA: John F. Kennedy School of Government, Harvard University

[6] An extreme example in this regard is Gap Inc. which has a team of over 100 staff that implemented or oversaw 2,500 audits over 1,200 facilities in 2010, including engaging with factories not in compliance with its code of conduct to bring them up to standard.
http://www.gapinc.com/content/csr/html/OurResponsibility/governance/codeofvendorconduct.html

effective in doing so and helps business ensure that their production processes and value chains are not harmful to the very people who help make their products.

Respectfully submitted,

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Biography:

Mark B. Taylor is a Senior Researcher at the Fafo Institute for Applied International Studies, Oslo, Norway and Visiting Research Fellow, Centre for International Policy Studies, University of Ottawa, Canada. For over a decade, Mr. Taylor has worked on the law and policy applicable to economic dimensions of armed conflict and has written on business due diligence, business in conflict zones, conflict minerals, and business and human rights. He has acted as an advisor on these issues, working with governments, the United Nations, non-governmental organizations and businesses. Most recently, Mr. Taylor participated as an expert in the OECD-led process which produced the "OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas" and advised the UN SRSG on Business and Human Rights, Professor John Ruggie, in the latter's dialogue with governments on how to respond to business in conflict zones.

A former Managing Director of Fafo AIS, Oslo, Mr. Taylor is Fafo's representative on the Just Jobs Network led by the Center for American Progress, in Washington D.C, and a Senior Advisor to Global Witness, London. Mark is Editor of the legal analysis blog 'Laws of Rule' (www.lawsofrule.net) as well as the 'Red Flags' initiative (www.redlfags.info) on liability risk for business in conflict zones. A list of publications can be found here: http://www.fafo.no/pers/bio/mta.htm