American Watch Association • P.O. Box 464 • Washington, DC 20044 • (434) 963-7773 • Fax: (434) 963-7776

October 17, 2011

BY ELECTRONIC MAIL SUBMISSION

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

Dear Ms. Schapiro:

This letter is submitted by the American Watch Association ("AWA") in response to the Securities and Exchange Commission's ("SEC") proposed rulemaking and in anticipation of the SEC's upcoming public roundtable with respect to conflict minerals and section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). The AWA strongly supports the exclusion from the reporting requirements in the SEC's proposed regulations for retail sellers who only sell the products of third-parties and are not involved with the manufacturing of such products.

The AWA is a trade association that for over half a century has represented the interests of the watch industry in the United States. AWA's more than 80 member brands and companies import, manufacture, and sell watches, watch movements, and other watch and jewelry products. The watch industry is a key factor in the nation's economy, supporting tens of thousands of jobs with annual sales in excess of over 4 billion dollars.

Section 1502 of Dodd-Frank establishes reporting requirements regarding the use in manufacturing of conflict minerals that originated in the Democratic Republic of the Congo or an adjoining country. Specifically, the disclosure requirements apply to a person if the person is required to file reports to the SEC pursuant to the Securities and Exchange Act of 1934 and conflict minerals are necessary to the functionality or production of a product *manufactured by such person.*[1]

The SEC's proposed regulations correctly recognize that section 1502 is intended to impact only those issuers that manufacture products. "The Conflict Minerals Provision

---

[1] *See* 15 U.S.C. § 78m(p)(2) (emphasis added).

applies to any person for whom conflict minerals are necessary to the functionality or production of a product manufactured by that person. It appears, therefore, that the Conflict Minerals Provision was not intended to apply to all issuers, but was intended to apply only to issuers that manufacture products."[2]

Moreover, the SEC recognized in its proposed regulations that issuers may indirectly manufacture products by contracting with a third-party and that such issuers should be subject to the requirements. "We intend that our proposed rules would apply to issuers that contract for the manufacturing of products over which they have any influence regarding the manufacturing of those products. They also would apply to issuers selling generic products under their own brand name or a separate brand name that they have established, regardless of whether those issuers have any influence over the manufacturing specifications of those products, as long as an issuer has contracted with another party to have the product manufactured specifically for that issuer."[3]

However, the preamble to the SEC's proposed regulations makes abundantly clear that the regulations do not apply to issuers that only sell the products of third-parties. "We do not, however, propose that our rules would apply to retail issuers that sell only the products of third parties if those retailers have no contract or other involvement regarding the manufacturing of those products, or if those retailers do not sell those products under their brand name or a separate brand they have established and do not have those products manufactured specifically for them."[4]

The AWA appreciates the SEC's clear and unambiguous intent to exclude so-called "pure retailers" from the reporting requirements and believes that such an exclusion is essential for a number of reasons. First, the SEC's interpretation is consistent with a plain reading of section 1502. The disclosure requirements in section 1502 apply only if conflict minerals are necessary to the functionality or production of a "product manufactured by such person." It follows that an entity like a retailer who has no involvement in the manufacturing process for the products it sells should not be subject to the reporting requirements.

Second, the exclusion for "pure retailers" is supported by the legislative history of the conflict minerals provision. Senator Durbin (D-Ill) made clear in a letter to the SEC following the passage of Dodd-Frank that section 1502 should not apply to pure retailers:

---

2 75 Fed. Reg. 80948, 80952 (Dec. 23, 2010).

3 75 Fed. Reg. 80948, 80952 (Dec. 23, 2010).

4 75 Fed. Reg. 80948, 80952 (Dec. 23, 2010).

> "A second area of concern has been over which companies are manufacturers and which are not. We were careful not to include companies that only sell manufactured products in the requirements for which entities must report. While we were clear to exempt pure retailers from reporting, there are many retailers that also engage in manufacturing. These retailers issue requirements for products to be manufactured for them – including design, quality, product life-expectancy, and so on. In our view, pure 'white label' products, where retailers have no influence in their manufacture, should not be subject to reporting. However, products that the retailer contracts to be manufactured or for which the retailer issues unique product requirements must be included."[5]

Several members of Congress who were active during deliberations of section 1502 have weighed in following the SEC's proposed regulations, and all support an interpretation that focuses on the entity's "use" of conflict minerals.[6] A retailer who sells third-parties' products is not in any sense a "user" of the conflict minerals contained in such products.

Third, the exclusion recognizes that retailers will have little ability to accumulate detailed manufacturing and supply chain information regarding the products they sell, unless the retailer has a hand in the manufacturing process. A retailer who contracts to have a product manufactured for him can insist upon conflict free certifications and other due diligence measures as part of contract negotiations. Other retailers and distributors who have no involvement with the manufacturing process will have much less leverage to access such information and will find it difficult to comply with section 1502 if it is applied to them.

---

5 *See* Letter from Dick Durbin and Jim McDermott, Congressmen, to Mary L. Schapiro, Chairman of the SEC (Oct. 4, 2010).

6 *See* Letter from Reps. Barney Frank, Jim McDermott, et al. to Mary L. Schapiro, Chairman of the SEC (Sept. 23, 2011) ("Section 1502(b) intended for all manufacturing companies thatuse minerals in their products, regardless of how small the percentage or what label they manufacture under, to be required to trace and disclose information on their supply chains."); Letter from Dick Durbin and Jim McDermott, Congressmen, to Mary L. Schapiro, Chairman of the SEC (Feb. 28, 2011) ("If an entity manufactures or contracts other entities to manufacture, all or part of a product that contains conflict minerals, that company and its directly-involved subsidiaries should report on the totality of the product and work with suppliers to comply with the requirements.").

The AWA very much appreciates the opportunity to submit these comments. If you have any questions about this letter or would like to discuss it with us in greater detail, please contact Emilio G. Collado at (434) 963-7773 or egcollado@earthlink.net.

Sincerely,

Emilio G. Collado, III
Executive Director