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Comments of
IPC – Association Connecting Electronics Industries
On
SEC Roundtable on Issues Relating to Conflict Minerals

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Table of Contents

I. Executive Summary 3
II. The SEC Has Significantly Underestimated the Cost of the Proposed Rule 4
III. What is Covered by the Rule 5
A. The SEC Should Specify Tin, Tantalum, Tungsten and Gold as Metals for Which the Regulatory Requirements Must be Met 5
B. The SEC Should Clearly Define Covered Products. 6
IV. What Steps Will be Required to Comply with the Rule 7
A. The SEC Could Significantly Reduce the Burden of this Rule Through a Phased Implementation. 7
B. The SEC Should Provide Non-Binding Examples of Appropriate Due Diligence 8
C. The SEC Should Specify Performance Audits Focusing on the Due Diligence Process 9
D. A Conflict Minerals Report and Audit Should Not Be Required for Recycled Materials 9
E. The SEC Should Address How to Handle Minerals from a Mine that Changes "Conflict" Status 10
V. Reporting Issues 10
A. The SEC Should Develop a Synchronized Reporting Schedule 10
B. The SEC Must Provide a Transition Rule for Stockpiled Materials 10
VI. Conclusions 11

I. Executive Summary

IPC – Association Connecting Electronics Industries is pleased to provide these supplemental comments in response to the Security and Exchange Commission (SEC) proposed rule on Conflict Minerals (S7-40-10) and the panel discussion held on October 18, 2011. These comments focus on the issues raised during the October 18, 2011 panel discussion and include additional information that has become available since our original comments were submitted.

IPC, a U.S. headquartered global trade association, represents all facets of the electronic interconnect industry, including design, printed board manufacturing and electronics assembly. Printed boards and electronic assemblies are used in a variety of electronic devices that include computers, cell phones, pacemakers, and sophisticated missile defense systems. IPC has over 2,700 member companies. As a member-driven organization and leading source for industry standards, training, market research and public policy advocacy, IPC supports programs to meet the needs of an estimated $1.7 trillion global electronics industry.

IPC supports the underlying goal of the proposed rule that implements the measure described in Section 1502 of the Dodd-Frank Act (Public Law 111-203), which is to prevent the atrocities occurring in the Democratic Republic of Congo (DRC). We understand that those perpetrating the atrocities are obtaining funding from the minerals trade and that the aim of Section 1502 is to cut off this funding. The electronics industry, including IPC members, continues to be actively involved in a number of ongoing initiatives that seek to improve control and transparency in the mining and refinement of conflict minerals.

These comments focus on the issues raised during the October 18, 2011 panel discussion on conflict minerals and IPC's recommendations for reducing the significant burden imposed by the proposed regulations. These issues, and a number of other issues of concern, are discussed in more detail in our March 2, 2011 comments.

IPC believes the SEC's analysis on the impact of the regulation significantly underestimates the impact and cost to U.S. manufacturers. A recent, independent analysis of the costs, conducted at the Payson Center for International Development at Tulane University Law School[1] estimated the implementation of the proposed rules would cost $7.93 billion dollars, over 100 times the SEC's estimate of $71.2 million.

IPC encourages the SEC to implement the requirements of Section 1502 in a manner that supports the goals of the statute without unduly burdening U.S. manufacturing industries or causing unnecessary disruptions of the minerals trade, which is vital to the livelihood of the people of the DRC.

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[1] Chris Bayer, Tulane University, "A Critical Analysis of the SEC and NAM Economic Impact Models and the Proposal of a 3rd Model in view of the Implementation of Section 1502of the Dodd-Frank Wall Street Reform and Consumer Protection Act, October 17, 2011.

Specifically, given the significant estimated burdens associated with the proposed regulations, we encourage the SEC to seriously consider the implementation of phase-in rules which can significantly reduce the burden of the proposed regulation while still meeting legislative intent. The SEC also must define a reasonable level of inquiry for recycled materials that does not require a conflict minerals report and audit.

The SEC should focus the regulation on economically significant uses of conflict minerals by limiting coverage to conflict minerals contained in the product, instituting a de-minimis threshold, requiring a minimum level of control over the manufacturing process before an issuer must comply with the proposed rules, and specifying tin, tantalum, tungsten and gold as metals for which the regulatory requirements must be met. We also recommend that the SEC provide a transition rule for stockpiled materials.

The SEC can also reduce the burden on issuers and their suppliers by providing non-binding examples of reasonable country of origin inquiries and due diligence. Both initial and ongoing burdens can also be reduced by implementing a synchronized reporting schedule and specifying performance audits focusing on the due diligence process.

II. The SEC Has Significantly Underestimated the Cost of the Proposed Rule

IPC believes the SEC's analysis on the impact of the regulation significantly underestimates the impact and cost to U.S. manufacturers. The SEC, more specifically, has underestimated the number of issuers affected by the rule, failed to account for all of the derivatives regulated under the proposed rule, underestimated the cost of compliance for affected issuers, and failed to consider the enormous burden on the supply chain. The SEC must, as detailed in these comments, significantly revise their cost estimate and implement measures that would reduce the anticipated burden.

The SEC has incorrectly estimated the number of issuers that will need to prepare a Conflict Metals Report (CMR). The SEC incorrectly assumes that since the DRC and adjacent countries may account for less than 20% of the world's supply of tantalum and the common derivatives of other conflict minerals, only 20% of affected issuers will be required to complete a CMR. This is a flawed assumption because 1) the minerals supplied by the DRC may be distributed such that they account for 20% of the supply for 100% of users, and 2) the vast majority of users will be unable to identify the origin of their conflict minerals, especially until more viable audit and tracking systems are in place, and therefore will need to complete a CMR. It is expected that nearly 100% of affected issuers will need to complete a CMR, especially in the initial years of the regulation.

The SEC has underestimated the number of issuers affected by the rule by focusing only on the four most common derivatives of the conflict minerals identified in the legislation. As discussed in Section III.A. of these comments, we encourage the SEC to focus the regulation on tin, tantalum, tungsten and gold. Should the SEC choose to retain the broader scope of the

regulation, all derivatives of the regulated conflict minerals must be included in the cost estimates.

The SEC has underestimated the cost of compliance for issuers. A recent, independent analysis of the costs was conducted at the Payson Center for International Development at Tulane University Law School[2] at the request of Senator Durbin, one of the authors of the provisions in Section 1502. The study estimated issuer costs of $2.8 billion in the first year for implementing the proposed rule, plus ongoing, recurring costs for CMR audits required under the proposed regulation. The Tulane study estimated key costs, many of which were not accounted for by the SEC. For example, strengthening internal management systems in order to support due diligence would cost issuers $26 million dollars and instituting the necessary IT systems would cost issuers $2.6 billion dollars.

The SEC failed to account for the significant burden imposed on the supply chain by the proposed regulation. The Tulane study found the costs to the supply chain to be almost double the direct costs borne by issuers, at $5.1 billion for the first year.

III. What is Covered by the Rule

A. The SEC Should Specify Tin, Tantalum, Tungsten and Gold as Metals for Which the Regulatory Requirements Must be Met

Section 1502 defines conflict minerals as "columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives." Although the main metals derived from these minerals are tin, tantalum, tungsten, and gold, a number of other metals, including niobium, iron, and uranium are refined from these minerals. The broad nature of this definition creates an unintended and significant burden on issuers and their suppliers by exponentially increasing the number of metals, products, suppliers, and smelters that must be traced and audited under the regulations. Tin, tantalum, tungsten and gold are the economically significant derivatives of these metals. Other metals are neither discussed in the SEC's proposed regulation nor are they included in the SEC's cost estimate. Should the SEC choose not to clarify focus on these four metals, the SEC must revise its cost estimates to account for the significant additional costs that would be incurred by issuers and their supply chain. By focusing the regulation on these specific metals, the SEC will reduce the burden of the regulation without reducing their intended effectiveness.

[2] Chris Bayer, Tulane University, "A Critical Analysis of the SEC and NAM Economic Impact Models and the Proposal of a 3rd Model in view of the Implementation of Section 1502of the Dodd-Frank Wall Street Reform and Consumer Protection Act, October 17, 2011.

B. The SEC Should Clearly Define Covered Products.

1. Necessary to the functionality

The SEC should not consider conflict minerals necessary to the production of a product if they are not contained in the product. The SEC should not consider conflict minerals necessary to the production of a product even if the tool or machine containing conflict minerals was manufactured for the purpose of producing the product. Such an approach would be much broader than intended by the legislation. Additionally, such an approach would be very difficult for the SEC to implement or enforce, given the difficulty of determining and verifying which equipment is designed for what production process. Finally, this reporting may be unnecessarily duplicative, as any issuer manufacturing tools or machinery would be required to comply with the proposal if conflict minerals are necessary for the functionality of the tool or machine.

2. De-minimis

As discussed in more detail in our March 2, 2011 comments, IPC recommends that the SEC adopt 0.1% by weight de-minimis threshold in their rule. A de-minimis standard is not a loophole or exemption and it will not decrease efforts to increase supply chain transparency. A de-minimis threshold will allow the SEC and issuers to focus on the products containing a significant amount of the conflict minerals in a manner that will change supply chain behavior. Should the SEC not wish to implement permanent de minimis standards, we recommend the use of de minimis standards for phasing-in the regulation. By focusing only on significant uses of conflict minerals first, the SEC would improve the efficiency of implementation and ease the compliance burden on some of the less significant users of conflict minerals, while maintaining consistency with the intent and goals of the rules.

3. Control over the product

The SEC should require a minimum level of influence, involvement, or control over the manufacturing process before an issuer must comply with the proposed rule. Electronics Manufacturing Service (EMS) or contract manufacturers assemble electronics for Original Equipment Manufacturers (OEMs) or name brands. In many cases the OEM specifies all parts in the product through an Approved Supplier List (ASL). Although many of these items contain conflict minerals, the EMS provider typically does not control selection of suppliers or materials sources. Further, this may put the EMS provider where they do not have sufficient leverage over a supplier selected by an OEM, placing an excessive burden on the EMS provider. Issuers who purchase or assemble products from an ASL controlled by their customers should be exempted from the proposed reporting requirements for those items they do not specify.

4. Reasonable country of origin inquiry

IPC encourages the SEC to provide non-binding guidance as to what would constitute a reasonable country of origin inquiry standard. In order to promote cost-effective implementation, the SEC permits and encourages issuers to rely on reasonably reliable representations from their suppliers. Given the complex nature of the electronics and other manufacturing supply chains it would be extraordinarily inefficient if each member of the supply chain were required to attempt to trace the conflict minerals in their products to the smelter, or even less practically, to the mine. If issuers are not able to rely on reasonably reliable representations from their processing facilities, both directly or indirectly, the burden of this regulation will be significantly increased.

IV. What Steps Will be Required to Comply with the Rule

A. The SEC Could Significantly Reduce the Burden of this Rule Through a Phased Implementation.

As discussed in our March 2, 2011 comments, IPC strongly supports a phased implementation of the conflict minerals regulation to better align regulatory requirements with developing traceability and transparency systems. It is highly unlikely that a full scale-up of these programs will be possible in time to allow issuers to rely upon them in the year immediately following implementation of the regulation.

In order to avoid imposing a de-facto ban on legitimate minerals trade from the DRC and adjacent countries, we recommend that the SEC establish a transitional category of conflict minerals of indeterminate source. Provision of this third category for classifying conflict minerals should be of a short and temporary nature according to a schedule that will allow enough time for implementation of supply chain traceability in the DRC and adjacent countries.

As discussed in our previous comments, industry-developed on-the-ground tracking and smelter audit systems will play a critical role in the ability of the supply chain to identify conflict minerals that are DRC conflict free. Once traceable conflict free conflict minerals are available to the smelters in the next six to twelve months, it will take approximately one year for these minerals to be smelted and move through the supply chain for incorporation into components of complex, finished products. For these reasons, IPC is proposing a three year phase-in of these rules based upon the anticipated dates at which on-the-ground tracking systems are in place and supplying verifiable “conflict-free” minerals and a significant number of smelters have been audited and their products validated as “DRC conflict free.”

During the phase-in period, we recommend that issuers be required to disclose to the SEC: 1) that specific conflict minerals are necessary to the functionality of a product

manufactured by the issuer; 2) the company's conflict minerals policy; 3) the company's efforts to exercise due diligence on the conflict minerals used in their product. We recommend that during this phase-in period, companies that are unable to determine the source of their conflict minerals would not be required to complete a CMR, as the legislation requires such a measure only for companies whose conflict minerals did originate in the DRC or adjacent countries. Implementation of this phase-in would provide for an orderly, cost-efficient transition that promotes the goals of the legislation without inflicting undue burdens and harm upon U.S. issuers, their suppliers, and those engaged in the legitimate trade of conflict minerals from the DRC.

Failure to establish a realistic, implementable time-line for required supply chain transparency will result in continuing significant, negative unintended consequences for those engaged in legitimate minerals trade. As it will be impossible to implement measures to provide chain of custody from all conflict mines to smelters in the next one to three years, many companies will impose a de-facto ban on minerals originating in the DRC. This will impose significant financial hardship to thousands that depend on the legitimate minerals trade for their livelihoods.

B. The SEC Should Provide Non-Binding Examples of Appropriate Due Diligence

Given the varying circumstances affecting the broad range of issuers impacted by this rule, the SEC should not prescribe specific due diligence requirements. Prescribing or otherwise specifying required due diligence would impose significant burdens on issuers, especially those that are small businesses. The SEC should, however, provide assistance to issuers by identifying examples of acceptable due diligence such as industry developed smelter validation audits, the bag and tag scheme being developed by ITRI, information or standards provided by the Department of State or other federal agencies, the OECD standards, and others. Provision of a list of acceptable standards and guidance will provide important assistance to issuers without hampering their ability to comply in a manner that is both efficient and appropriate for their circumstances.

It is extremely important that the regulation permits and encourages issuers to rely on reasonably reliable representations of smelters or any other actor in the supply chain by explicitly supporting the acceptability of supply chain approaches to due diligence. As mentioned previously, it would be extraordinarily inefficient if not impossible for each member of the supply chain to attempt to independently research and verify all the way back to the mine of origin for the conflict minerals contained in their product. If issuers are not able to rely on reasonably reliable representations from their supply chain, the burden of this regulation will be significantly increased.

C. The SEC Should Specify Performance Audits Focusing on the Due Diligence Process

Third party audits are likely to be one of the most costly ongoing aspects of compliance with individual audits expected to cost $25,000.[3] SEC actions to clearly define audit requirements could have significant bearing on the costs of complying with this regulation.

Third party audits should focus on the design of a due diligence process rather than the contents of a CMR. The audit should examine a company's due diligence compliance program and procedures, for example, rather than a materials-based outcome approach verifying whether the company was able to trace the minerals in its products back to the smelter. We believe that this type of audit is more logically conducted under the Government Accountability Office standards for a performance audit which is generally used for non-financial audits and need not be conducted by an accounting professional. We believe that allowing performance of these audits by a non-financial expert is likely to result in less costly audits and improve the quality of the audits by permitting them to be conducted by auditors with experience in more pertinent fields such as supply chain logistics, corporate management, and social responsibility.

D. A Conflict Minerals Report and Audit Should Not Be Required for Recycled Materials

As detailed in our March 2, 2011 comments, IPC recommends that the SEC not require issuers using conflict minerals from recycled or scrap sources to furnish a CMR, including a certified independent private sector audit. Instead, the final rule should include an alternative approach for recycled or scrap sources that is practicable and does not overly burden recycled materials so as to discourage their use. Given other government efforts to encourage recycling in electronics and other industries, it is imperative that the SEC does not diminish these efforts by adding significant regulatory burdens to the use of recycled or reclaimed conflict minerals.

An issuer using a recycled material containing conflict minerals will not be able to provide any of the details required in a CMR. The traceability of the reclaimed metals is impossible to track due to the various forms of recycling and thousands of consolidators, reclaimers, and scrap dealers both foreign and domestic. Instead, issuers should have a reasonable basis for believing the material is recycled and maintain auditable records to support the determination. IPC believes that due diligence is the appropriate requirement for verifying recycled or reclaimed conflict minerals.

We believe recycled conflict minerals should have parity with conflict minerals originating from a conflict-free mine so as to encourage manufacturers to use recycled

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[3] Chris Bayer, Tulane University, "A Critical Analysis of the SEC and NAM Economic Impact Models and the Proposal of a 3rd Model in view of the Implementation of Section 1502of the Dodd-Frank Wall Street Reform and Consumer Protection Act, October 17, 2011.

and scrap materials, to reduce the demand for minerals that would support armed groups in the DRC and adjoining countries, and to maintain a fair market for metals and minerals. This could be accomplished by providing that after a manufacturer conducts a reasonable inquiry into the source of its conflict minerals no further action is required if either: (1) the minerals were determined to originate not from the DRC or adjoining countries, or (2) the minerals originated from a scrap or recycled source.

E. The SEC Should Address How to Handle Minerals from a Mine that Changes "Conflict" Status

Additionally, regulations will be needed to address minerals from a mine that changes status from "non-conflict" to "conflict."

The State Department has recognized proper identification of mines that are controlled by parties perpetrating atrocities to be a significant challenge. From the extraction of the minerals from the mines to the incorporation of the refined metals into products manufactured in the United States, significant time will pass and "conflict mines" will likely change status. For this reason, a no-transubstantiation rule is recommended.

We encourage the SEC to adopt a no-transubstantiation rule stating that if a mineral is "conflict-free" when it arrives at the smelter, it cannot become "conflict-associated" if its mine of origin changes status during the period that the mineral/refined metal is moving through the supply chain.

The State Department has recognized proper identification of mines that are controlled by parties perpetrating atrocities to be a significant challenge. From the extraction of the minerals from the mines to the incorporation of the refined metals into products manufactured in the United States, significant time will pass and "conflict mines" will likely change status. For this reason, a no-transubstantiation rule is recommended.

V. Reporting Issues

A. The SEC Should Develop a Synchronized Reporting Schedule

The SEC can significantly reduce the substantial burden on the supply chain by promulgating a single reporting date for all issuers. Requiring reports throughout the year, in concert with each issuer's annual report will pose a significant burden on the supply chain. Because a supplier's multiple customers will be on a different reporting schedule, the supplier will likely have to conduct due diligence and support third party audits repeatedly throughout the year. A single reporting date will allow for increased efficiency and thus lower costs, without reducing the effectiveness of the regulations.

B. The SEC Must Provide a Transition Rule for Stockpiled Materials

In order to make the reporting requirements useful and practicable, it is necessary for the SEC to implement transition rules to address aboveground minerals stocks already present in the supply chain when the regulation is implemented. Similarly, products manufactured with the refined metals already incorporated in finished goods or from conflict minerals already in the suppliers' inventories prior to an established implementation date should be exempt. Additionally, regulations will be needed to address minerals from a mine that changes status from "non-conflict" to "conflict." Without transition rules, it will be nearly impossible for users of conflict minerals to be able to identify themselves as "conflict-free," until the regulation has been in place for a number of years and all stocks existing prior to the implementation of the regulation have been used. Failure to implement transition rules will render the initial years of the regulation virtually meaningless.

VI. Conclusions

IPC is committed to addressing the use of conflict minerals and is actively working with many of its members on both a domestic and international level to address the issue. IPC member companies are participating in a variety of sector specific initiatives to develop industry wide protocols for removing conflict minerals from supply chains as well as with international organizations. Given the broad potential impact of this regulation on the day-to-day operations of manufacturing companies throughout the United States, and the impacts on legitimate trade in the DRC, we urge the SEC to exercise caution when implementing regulations under Section 1502 of the Dodd-Frank Act. Specifically, we encourage the SEC to:

- Allow maximum time and flexibility for industry to implement these potentially far-reaching rules;
- Implement phase-in rules which can significantly reduce the burden of the proposed regulation while still meeting legislative intent;
- Allow companies the flexibility to develop appropriate, supply-chain-based due diligence processes by providing non-binding examples of a reasonable country of origin inquiries and due diligence;
- Implement a synchronized reporting schedule;
- Specify performance audits focusing on the due diligence process;
- Specify tin, tantalum, tungsten and gold as metals for which the regulatory requirements must be met;
- Define a reasonable level of inquiry for recycled materials that does not require a conflict minerals report and audit;

- Develop appropriate transition rules for materials already in the manufacturing supply chain at the time these regulations are implemented;
- Focus the regulation on economically significant uses of conflict minerals by limiting coverage to conflict minerals contained in the product, instituting a de-minimis threshold, and requiring a minimum level of control over the manufacturing process before an issuer must comply with the proposed rules; and
- Provide a transition rule for stockpiled materials.

Implementation of these recommendations will significantly reduce the substantial burden posed by the proposed regulations with undermining the goals of the legislation.

We look forward to continuing to work with the SEC. Please contact me should you have any questions.

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