November 1, 2011

By e-mail to: rules-comments@sec.gov

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

Re: Conflict Minerals; File No. S7 – 40 – 10

Ladies and Gentleman,

Thank you for the opportunity to once again submit comments on the proposed rules implementing Sec. 1502 of the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act").

The signatories to this letter represent thousands of individual businesses in the U.S. precious metals and jewelry trade that will be impacted by the implementation of these rules. As explained here, and more thoroughly detailed in our previous comment letter, the supply chain for gold is complex and involves nearly every level of the trade.[1] Our members have urged us to continue to provide the Securities and Exchange Commission ("SEC") with information from our expert perspective about the unique nature of the gold supply chain, and the implementation challenges our industry faces. We fully support the humanitarian goals of the legislation and seek to break any possible link between regional armed conflict and our jewelry products. We are committed to finding a fair and cost-effective manner in which to support these goals and to comply with our obligations under the new rules implementing Section 1502.

[1] Our comment letter, dated March 2, 2011, is incorporated here by reference and continues to represent our views on the proposed rules. It is available at http://www.sec.gov/comments/s7-40-10/s74010-144.pdf.

This submission addresses matters raised by the panels and the SEC staff and Commissioners at the Roundtable session on October 18, 2011. As set forth below, we urge the SEC to ensure that its final rules acknowledge the unique nature of the gold supply chain, and permit affected companies to adopt fair and reasonable, cost-effective systems for implementation of the rules for gold within the broader framework of expected OECD due diligence guidance. In that connection, the OECD supplement for gold, expected to be finalized early next year, will contain vitally important guidance for our industry.[2] Without that guidance, it will be difficult to establish viable and widely accepted standards for due diligence as to the gold supply chain. For these reasons, we again ask the SEC to provide for a flexible implementation timetable and phased-in compliance system in its final rules. As expressed in our initial comment letter, a phased-in compliance system, once in place, can be improved upon with each submission by an issuer.

The Unique Complexities of the Gold Supply Chain

The goals of the conflict minerals provisions of the Dodd-Frank Act will best be met if the uniqueness of the gold supply chain is reflected in the final rules issued by the SEC. The OECD itself acknowledged the unique aspects of the gold supply chain by developing a gold supplement, not yet finalized, separate from its already published supplement regarding tin, tantalum and tungsten. Among the factors that distinguish the gold supply chain are:

<u>Refining</u>

Refining is a critically important point in the gold supply chain and, unlike the other minerals covered by the Act, is undertaken by thousands of diverse operators. Gold is refined many times during its existence. Refiners range from large, well-established associates of the London Bullion Market Association, to small, family-owned workshops with informal structures located all over the world. The fragmented and idiosyncratic nature of this wide segment of the industry presents a significant challenge in developing due diligence systems as to source.

Gold in the form of ore, gold concentrate, or grain is sent from an original source, such as a mine, to refiners located throughout the globe. Many refiners also receive supplies from diverse international sources, only some of which are mines, and merge these supplies during the refining process. Recycled gold is frequently combined with newly mined gold to produce usable bars, coin blanks or wire. After the fact, it is impossible to determine the sources of the gold that comprise a particular bar, blank or wire.

After refining takes place, gold products are sold by refiners to a variety of customers, including banks, automobile and electronic companies, medical and

[2] The expected guidance will be a Gold Supplement to the OECD's previously issued "Draft Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas." (December 2010). The OECD has already issued a Supplement on Tin, Tantalum and Tungsten.

dental device manufacturers, and jewelry manufacturers. The fact that gold is used across industries adds a layer of complexity to the supply chain.

Gold is Used as Currency

Besides being used in the industries noted above, gold is a global currency, and is traded as a commodity on international exchanges, as well as in other diverse and informal venues, such as small villages across the globe. It is used as currency, or easily exchanged for currency, in all trading markets around the world. This global demand, by such a diverse array of users, creates a fast moving and dynamic market that does not lend itself easily to transparent sourcing.

Recycled, Scrap and Existing Stocks of Gold

Gold is aggressively recycled, with positive results. Besides environmental benefits, recycled gold does not fund conflict. Approximately 40% of the world's gold supply is derived from recycled or scrap materials. Individuals selling privately-owned jewelry, driven by a down economy and the record high price of gold, make up the largest source of recycled material. Individuals sell gold jewelry to various buyers, including retail jewelry stores and pawnbrokers, who in turn sell to refiners.[3] It is interesting to note that in 2010, for the first time, the scale of recycled gold overtook the level of jewelry consumed in a year in the U.S.: 128.6 tons of gold was consumed, 143 tons of recycled scrap was processed.[4] Scrap gold, produced during manufacturing processes, is always carefully recaptured and refined since it represents high value. It is impossible, retroactively, to determine the source of recycled or scrap gold, as the SEC itself appears to have recognized in its proposed treatment of recycled conflict minerals.

Similarly, it is impossible to trace the origins of existing stocks of gold. A large portion of that gold derives from recycled and scrap materials. The rest of it derives from global sources that are equally impossible to identify. As urged in our previous submission, stocks of gold that exist as of the implementation date of the rules, as well as recycled and scrap gold, should be treated differently by the Commission than newly mined gold. The users of existing stocks of gold (as of the effective date of the rules) and recycled and scrap gold, should not be required to submit audited Conflict Minerals Reports. We agree that some reporting on these sources should be required, but with different obligations.

Artisanal Mining

Approximately 15 million people are employed in artisanal mining, especially of gold, and many are in Africa. Unknown numbers of individuals are employed as artisanal miners in the DRC and adjoining countries. These miners use

[3] *See* Philip Olden, "OECD Due Diligence Guidance for Responsible Supply Chain Management of Minerals from Conflict-Affected and High Risk Areas: Implications for the Supply Chain of Gold and Other Precious Metals" (August 2010) ("Olden Report"), at 5-6, available at http://www.oecd.org.

[4] Thomson Reuters GFMS Gold Survey, 2011

rudimentary processes and do not generally have legal rights to mine.[5] Their product enters the supply chain in whatever manner circumstances allow on a given day. The gold sourced from artisanal miners typically makes its way to small family-owned refining workshops. These workshops exist throughout North Africa, the Middle East, India and East Asia.[6] Once refined, the artisanally mined gold enters the global supply chain. No paper trail currently exists to track it back to a particular mine or point of origin. Addressing this complexity will take time, improved infrastructure, additional resources and the cooperation of industry and government.

Improvement to government infrastructure and control systems in the DRC Countries is imperative to establishing due diligence protocols for artisanally mined gold. Without government enforcement efforts, this gold can be smuggled out of the DRC Countries and this is reportedly happening. As was found by the OECD in 2010, very little was exported legally from the DRC at that time, making identification and sourcing nearly impossible.[7] Unfortunately, since adequate systems still do not exist, the industry must attempt to achieve the mandates of the Dodd-Frank Act in their absence. While several efforts are underway to address this issue, as detailed in our comment letter of March 2, 2011, the prevalence of artisanal mining, and the lack of government infrastructure and controls in the DRC Countries, pose very real challenges.

OECD Guidance for Gold is Critical to the Success of Industry Due Diligence Efforts

The OECD is expected to provide due diligence guidance regarding newly mined gold in a supplement due to be finalized in early 2012. Many in the industry intend to use the OECD guidance to build their own due diligence systems in compliance with Section 1502 of the Dodd Frank Act.[8] It will be the authoritative, globally-accepted basis on which affected jewelry companies will depend to develop these systems. Any effort to establish credible and effective due diligence systems in the absence of OECD guidance will be stymied by the lack of a widely accepted base for responsible sourcing. This has particular relevance in that, without the guidance, there will be no accepted standards for independent third-party audits, as required by Section 1502. In short, “due diligence” in the context of the gold supply chain has yet to be defined, meaning that reliable management diligence systems and the independent audits that are the cornerstone of such systems, are not yet achievable. We thus urge the SEC to align compliance requirements with the issuance of the OECD gold

[5] *See Olden Report*, at 4-5.
[6] *Id.,* at 5.
[7] OECD Pilot Project in the Mining and Minerals Sector, “Draft Due Diligence for Responsible Supply Chain Management of Minerals from Conflict-Affected and High-Risk Areas, Expert Meeting of the OECD Hosted Working Group, Summary Report,” April 28, 2010, at page 8, available at www.oecd.org.
[8] The World Gold Council (WGC) has expressed its strong support of OECD guidance in relation to its due diligence initiatives, including: the WGC Conflict-Free Gold Standard and Chain of Custody Standard; the Responsible Jewellery Council Code of Practices and Chain of Custody Initiative; and, the London Bullion Market Association Responsible Gold Guidance.

supplement by adopting the phased-in approach and flexible timetable described in our earlier comment letter. This will provide a realistic solution to a difficult challenge, in the interests of meeting the goals of the Dodd-Frank Act.

Recommendations

The Associations again urge the Commission to adopt a calibrated phased-in disclosure approach, as we detailed in our comment letter of March 2, 2011. This will avoid the onerous and punitive effect of issuers being required to provide a highly stigmatizing Conflict Minerals Report in which they must label gold supplies as “not DRC conflict-free,” simply because neither the infrastructure nor the guidance yet exists to facilitate supply chain due diligence. As detailed above and in our prior comment letter, the phased-in approach is necessary because of the uniquely complicated nature of the gold supply chain, and because of the delayed publication of authoritative gold due diligence standards by the OECD. We also again urge the Commission to treat recycled, scrap and existing stocks of gold differently from newly mined gold, and not to require the submission of an audited Conflict Minerals Report for the use of those materials. The disclosure of indeterminate origin, and efforts underway to determine origin, should be permitted as part of a phased-in implementation plan. Further details regarding these recommendations are contained in our prior submission of March 2, 2011.

Sincerely,

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