TechAmerica
WHERE THE FUTURE BEGINS

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November 1, 2011

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

Re: File Number S7-40-10

Dear Ms. Murphy:

On behalf of TechAmerica, a trade association representing over 1000 companies of all sizes in the U.S. technology industry, I want to provide comments regarding the Commission's required rulemaking under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding reporting requirements for conflict minerals originating in the Democratic Republic of the Congo and adjoining countries. These comments are in addition to those we filed on March 2, 2011 on this rule as part of an industry coalition with the National Association of Manufacturers. [1]

TechAmerica is the leading voice for the U.S. technology industry, which is the driving force behind productivity growth and jobs creation in the United States and the foundation for the global innovation economy. TechAmerica members include all segments of the technology business: manufacturers and suppliers of broadband networks and equipment; consumer electronics companies; ICT hardware companies; Internet and e-commerce companies; Internet service providers; information technology government contractors; and information technology consulting and sourcing companies.

As stated in our initial coalition comment letter, TechAmerica strongly supports the objectives of the Dodd-Frank Section 1502 provision to address the violence in the Democratic Republic of the Congo that has been fueled by the mining industry. Many of our members have been working steadily with international organizations and stakeholders in the region to put in place mechanisms to support the traceability of minerals and create an infrastructure to enable conflict-free mineral sourcing. Our members are leaders in the EICC and GeSI efforts to develop a set of conflict-free smelters and refiners and several of our largest members are working closely with the OECD as part of its pilot program to

[1] Comment letter to the SEC submitted March 2, 2011 by Advanced Medical Technology Association, American Apparel & Footwear Association, American Association of Exporters and Importers, Consumer Electronics Association, Consumer Electronics Retailers Coalition, Emergency Committee for American Trade, IPC-Association Connecting Electronics Industries, Joint Industry Group, National Association of Manufacturers, National Foreign Trade Council, National Retail Federation, Retail Industry Leaders Association, TechAmerica, USA Engage. http://www.sec.gov/comments/s7-40-10/s74010-112.pdf.

develop more detailed OECD due diligence guidelines regarding responsible supply chain purchases of minerals.

We continue to fully support the recommendations in our initial industry association coalition comment letter but would like to add several points to those made in the March 2, 2011 filing.

Phase-in Timetable for Implementation

We would like to reiterate our recommendation for the SEC to consider a phase-in timetable for implementation of the Proposed Rule. This does not seek to delay the required disclosure of an issuer's use of conflict minerals in the first year of the regulation's effect, but rather allow companies to report their due diligence efforts in a structured way along the lines of NAM's proposed three-year phase-in approach outlined in their concept paper submitted to the SEC on July 26, 2011. [2] As stated by NAM in its comment, we believe this approach is consistent with the legislation's requirement to ensure disclosure to the SEC only if the issuer knows that the minerals in its products originated in the DRC or adjoining countries.

Since the filing of our association coalition's initial comment on the Proposed Rule, the technology industry has worked steadily to identify the use of these minerals in their supply chain and to begin the process of establishing supply chain management systems that rely on the growing infrastructure of conflict-free smelters and refiners where available. However, given the lack of a verifiable infrastructure in place for all the minerals affected, a large number of companies will be forced to state that they cannot yet determine the origin of their minerals despite their most strenuous efforts at due diligence. Under the SEC's Proposed Rule, this would subject them to the costs of a conflict minerals report and audit, as well as the potential negative impact of being unable to state that they are conflict-free for the purposes of their customers and their shareholders. Moreover, the large-scale efforts of companies to create a conflict-free supply chain without the necessary infrastructure in place to allow conflict-free sourcing from the DRC and adjoining countries, has already begun to result in a shift away from sourcing minerals from this region in Africa. This shift inflicts harm on the very region the legislation was designed to support. [3]

A recent study commissioned by Senator Dick Durbin (D-IL), one of the initial sponsors of the Dodd-Frank Section 1502 provision, from Tulane University Law School on the costs and impact of the Proposed Rule endorsed the concept of a phase-in timetable for implementation approach outlined by NAM and our association coalition in our original comment letter. The study finds that companies need time to build the necessary complex management systems to enable a conflict-free supply chain without harming the DRC and its surrounding countries.

> *The provision of a phase-in period for the rules, to be finalized by the SEC within 2011, makes sense for multiple reasons. From a management and disclosure perspective, considerable time and effort will be*

[2] Letter of Franklin Vargo of NAM to SEC in response to File Number S7-40-10, July 26, 2011, http://www.sec.gov/comments/s7-40-10/s74010-280.pdf.

[3] http://www.theglobeandmail.com/news/world/africa-mideast/plan-to-stanch-flow-of-conflict-minerals-from-congo-causes-turmoil/article2210033/.

required to establish, on a company level, the management systems, render them operational, and commission the audits and prepare the related reports and SEC forms. NAM argues that transition rules apply for an implementation period which "is needed for the disclosure requirements, for inventory already at smelters, for products made from existing inventories, and for acquisitions."24 We agree with NAM that at least a year would be needed before issuers may be able to provide conflict minerals disclosures. Conversely, if the entire industry was jolted by the rules going into effect immediately without a transition phase, and the required time to build systems and align procedures was not permitted, the de facto embargo against the minerals of the Central African region, against which NAM cautions, could become entrenched. Since April 2011, owing to the decision of EICC companies to stop sourcing from the DRC if the material is not fully traceable, a de facto embargo on Congolese-sources minerals is currently in effect.[4]

Challenges Faced by Small to Mid-Sized Companies:

TechAmerica has many members who are small to mid-sized companies. Many of these companies will be tasked with complying with the SEC conflict minerals disclosure requirements even if they are not publicly-held, given their role as suppliers of parts, components or sub-assemblies to larger manufacturers in the technology industry. For these companies, coping with the complexity and scope of the SEC's Proposed Rule will pose significant challenges given their limited ability to influence their suppliers to provide information regarding the origin of their minerals sources. They are also less able to support the costs of the supply chain due diligence, reporting systems and audits required to ensure compliance.

These companies will rely even more heavily on the ability of the international community of governments, leading manufacturers and stakeholders on the ground to implement a broad infrastructure of verifiable mechanisms for conflict-free sourcing. Until these mechanisms are in place, the Proposed Rule's disclosure requirements will place a large burden on small companies, and divert scarce resources to enable compliance. It may also result in lost business to larger firms if they are unable to provide the necessary assurances of conflict free sourcing in the short amount of time demanded by their customers to keep pace with the rule.

In a letter dated October 25, 2011, the Small Business Administration expressed its concern regarding the Proposed Rule's impact on small business and asked that the SEC "more accurately describe the costs and burdens of the proposed rule, and should also more accurately detail the number of small entities that would be impacted by the Proposed Rule." [5] The SBA asked that the SEC publish an initial regulatory flexibility analysis (IRFA) in the *Federal Register* to reflect more accurately the costs and impact of the Proposed Rule prior to its finalization, pursuant to the requirements of the Regulatory

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[4] "A Critical Analysis of the SEC and NAM Economic Impact Models and the Proposal of a Third Model in View of the Implementation of Section 1502 of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act," Chris Bayer with contributions from Dr. Elke de Buhr (Payson Center/Tulane University), October 17, 2011, http://www.sec.gov/comments/s7-40-10/s74010-351.pdf.

[5] Letter of SBA to the SEC in response to File Number S7–40–10,October 25, 2011. http://www.sec.gov/comments/s7-40-10/s74010-349.pdf.

Flexibility Act (RFA). TechAmerica supports this effort and believes the Proposed Rule's potential negative impact on small to mid-size companies requires further attention from the SEC.

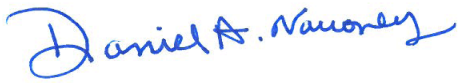
Scope of Coverage of the SEC Conflict Minerals Disclosure Requirement:

In addition to the points made regarding this issue in our association coalition's initial comment letter on March 2, 2011, we would like to add the following points regarding the scope of the coverage of the rule when it is finalized:

- R&D Equipment: In addition to ensuring that the rule does not cover manufacturing tools, equipment or processes that use conflict minerals, we would like to respectfully request that the SEC consider excluding research and development equipment made available on a business-to-business basis from the scope of the rule. This is justified given the small amount of R&D equipment used for testing/ quality purposes or for innovative prototypes. Requiring such equipment to be conflict-free would entail substantial additional costs and discourage R&D investment. There is precedent for this type of exclusion already in the newly recast EU Directive on Hazardous Substances (RoHS).[6]
- Mergers and Acquisition Grade Period: The SEC should consider instituting a grace period of at least 18 months from the date of an acquisition to permit an issuer time to converge its internal supply chain management mechanisms to conform to the reporting requirements of the rule. This is especially needed in the case of very large multinational corporations with complex supply chains serving a large range of technology products.

TechAmerica would like to thank the SEC for the opportunity to provide additional comments on the Proposed Rule on conflict minerals. We appreciate the Commission's openness to hearing from industry and other stakeholders, during its October 18, 2011 roundtable and through these comments, as it proceeds to formulate the Final Rule. We hope the Commission will continue to work with industry to make the Final Rule as workable, effective and cost- efficient as possible, to enable it to achieve the goals of the legislation.

Sincerely,



Dan Varroney
Acting President and CEO

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[6] Directive 2011/65/EU of the European Parliament and the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment, Recast, June 8, 2011 Article 2 (4), "Equipment specifically designed solely for the purposes of research and development only made available on a business to-business basis." http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0088:0110:EN:PDF.