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November 1, 2011

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

The Honorable Mary L. Schapiro
Chairman
U.S. Securities and Exchange Commission

Re: Conflict Minerals - Proposed Rule (File Number S7-40-10)

Dear Chairman Shapiro,

Thank you for opening the comment period on this complex matter. The International Precious Metals Institute appreciates the opportunity to supplement our earlier comments of August 17, 2010 and January 19, 2011, as we increasingly understand the circumstances confronting issuers, gold industries and the Commission. As before, this comment is in regard only to gold.

The Commission, in its recent Roundtable, made several inquiries regarding the audit that might be performed to meet the requirements of the Dodd Frank Act. We agree that there may be two audits, as suggested in the proposed regulation, first of the representations made by a gold refiner to an issuer in a country-of-origin inquiry, and then of a Conflict Minerals Report, where that may be necessary. Furthermore, we believe that each of these audits may vary considerably with the circumstances, which may be very complex. It may be worthwhile, therefore, to describe a gold supply chain through the tasks that are imposed by the Dodd Frank Act, to determine the points and types of audits that might reasonably be performed.

The first step for an issuer is to determine if its uses gold in its manufactured products. An issuer could audit its efforts in this step, but the proposed rule does not suggest this. For manufacturers of gold jewelry, this step is obvious. For manufacturers of other products, some careful investigation may be necessary if they are not thoroughly familiar with the exact material content of all components. Electronic products, and products that contain electronic components, are likely to use gold: personal computers, mobile phones, televisions, music players, automobiles, airplanes, watches, cameras, toys, and on and on. Gold is used in electronics because it is both a good conductor of electric current and, most importantly, because it does not oxidize and lose that conductivity. There are other metals that are also good conductors, such as copper, but copper oxidizes when exposed to air, and copper oxide is not a good conductor of electricity. For electronic devices, it is crucial that conductivity be sustained, and gold performs that function. The amount of gold in an electronic device need not be large, indeed it is usually a thin coating of gold on a small part, but that coating is necessary if the device is to provide sustained reliable service.

IPMI is an international association of producers, refiners, fabricators, scientists, users, financial institutions, merchants, private and public sector groups, and the general precious metals community formed to: (1) provide a forum for the exchange of information and technology; (2) seek and promote the efficient and environmentally sound use, reuse, and recycling of precious metals from both primary and secondary sources; (3) conduct educational meetings and courses; (4) serve as a primary resource for information for the public, industry, and government agencies worldwide and (5) recognize excellence and achievement through awards to individuals and educational institutions.

Once gold is found in a product, it must be tracked to a refiner, because acquisition of gold for refining is the point at which source countries will be best determined. Such tracking will almost always involve several steps; it would be unusual that any issuer, other than perhaps a large jewelry manufacturer or bullion bank, ever directly purchases gold from a refiner. Instead an issuer purchases some component in which gold is used. For example, a connecting point on an electronic device, and its matching point on a cable, will have exposed surfaces that are plated with gold. The connecting point and the cable will be manufactured not by an issuer but by its subcontractors. The process of gold surface coating of the connecting point and cable may be further subcontracted. A gold surface coating chemical, such as potassium gold cyanide, will be supplied to the subcontractors by manufacturers of gold chemicals. Those gold chemical manufacturers will obtain elemental gold from one or more gold refiners, or perhaps from a gold bullion bank that itself acquired gold from one or more refiners. Thus there will be a series of contracts, with multiple and/or alternate parties, at many steps that must all be tracked back by an issuer to the involved gold refiners. Again the efforts of an issuer in this step could be audited, but the Commission's proposal does not suggest it.

It should be understood that there are many possible refiners at this point in the supply chain; the gold refining business is much more diversified than the businesses of tin, tantalum and tungsten. There are 61 gold refiners accredited by the London Bullion Market Association (LBMA), the highest tier of gold refining. They are located in 26 countries on 6 continents. Because gold has very high value at very small size, it can be shipped by air anywhere in the world, and so every LBMA-accredited refiner has a potential worldwide commercial market. In addition, beyond the 61 LBMA-accredited refiners, there are many more gold refiners that are also capable of producing a high quality gold product.[1] Still, even with this diversity of potential suppliers, all of the supply chain transactions between an issuer and gold refiners will have been documented, and one or more formal gold refining operation will be identified at the end of every electronics component gold supply chain.[2]

Once identified, an issuer will seek representations from that gold refiner about sources in the Dodd Frank Act DRC Countries.[3] A refiner's representations – in all likelihood – will be that it does not source gold from DRC Countries. This should be seen as very plausible. Mine output from the DRC and its nine adjoining countries is approximately 44 tonnes per year,[4] or only about 1% of annual worldwide gold production. Furthermore, the largest source of this DRC Country gold production is a large formal mine in Tanzania, outside of the DRC conflict itself, which sends its product directly to a formal LBMA-accredited refinery in South Africa. Therefore very little DRC Country gold is available to be sourced by the formal gold refining industry. Representations made by a formal gold refiner, of the hundreds

[1] For example, in the United States, with two LBMA-accredited gold refiners, the U.S. Geological Survey reports that "Commercial-grade refined gold came from about 2 dozen producers." U.S. Geological Survey, Mineral Commodity Summaries, Gold, January 2011. Still further out, there are any number of small refiners and artisans who are capable of refining gold, typically informally, and although their product will not be accepted by bullion banks and quality-conscious manufacturers, they can easily sell that product in informal gold markets, where it can be used as currency or manufactured into less demanding jewelry and bars. This last group are unlikely to be found to be at the refining end of issuers' supply chains.

[2] The exception to this is if a supply chain ends at a bullion bank with gold that does not identify its refiner, as is the case in some historical stocks. We support a rule that exempts pre-existing financial stocks of refined gold.

[3] "However, one way we would view an issuer as satisfying the reasonable country of origin inquiry standard is if it received reasonably reliable representations from the facility at which its conflict minerals were processed that those conflict minerals did or did not originate in the DRC countries." 75 FR 80957, December 23, 2010

[4] USGS Minerals Yearbook 2009, Table 8: Burundi 750 kilograms; Central African Republic, 10; Rwanda, 20; Tanzania, 40,000; Uganda, 1,600; Zambia, 1,500. Sudan is also listed as producing 1,922 kilograms, but this is mined in the north, which is no longer an adjoining country of the DRC.

around the world, that it does not source gold produced in the DRC Countries is thus most likely to be true, if for no other reason than that such gold is scarce, even if it were wanted.

Direct sourcing from the DRC Countries will encompass most but not necessarily all of an issuer's country-of-origin inquiry. That inquiry will also include indirect sourcing, to guard against the possibility that DRC Country gold has been transshipped through middlemen, either in the normal course of business or to launder its origin. This is not a strong likelihood; again, there is not much gold available from the DRC Countries, and the UN Group of Experts has reported the smuggling of gold from the eastern DRC and its adjoining countries to Dubai, with India a likely destination, outside of the formal gold refining industry. Still, the possibility of laundering should be part of a gold refiner's due diligence, and factor into its representations. A refiner's efforts in this regard will be risk-based; for example, if gold from the DRC Countries were to be laundered, it is significantly less likely that it would be laundered through the production of artisanal miners in Alaska than through Nairobi, or through low-grade byproducts of other metals, or through jewelry collected in Kansas City. Obviously there are variations between those routes, and a refiner should take reasonable, risk-based measures to protect itself, and to protect downstream users, from the possibility of laundering. An issuer's inquiry and a refiner's representations will therefore encompass all of a refiner's sources, both direct and indirect, and the possibility that it might receive indirect shipments from the DRC Countries. Such an inquiry should not unduly burden a formal refiner; gold refining is a serious high-value business, a refiner knows the identity and locations of its sources, and casual or informal acquisition of gold is not a business practice of formal gold refining. A gold refiner can issue its representations in a statement, repeated as often as necessary, regarding its sources in relation to the Dodd Frank Act.

Those representations then might be the end of Dodd Frank Act compliance for issuers that deem them sufficiently reliable, and no audit would be undertaken. Other issuers may seek further verification, however, and some issuers are currently doing so by looking for an independent third party audit.[5] But the question remains open as to exactly what is to be audited at this point in supply chain due diligence. The SEC proposal lacks specific guidance of what a gold refiner must do in order that its determinations of the locations of its sources of gold will be deemed reliable for an issuer's Dodd Frank Act compliance, in a systematic way that can be audited and validated.

There are, however, other guidance and standards regarding gold supply chain due diligence. The cornerstone is the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, with its five step process. Furthermore the key for this stage of Dodd Frank Act compliance – an issuer's reasonable country of origin inquiry – will be the implementation by a gold refiner of Step 1: Establish strong company management systems, and Step 2: Identify and assess risk in the supply chain. The forthcoming OECD Gold Supplement, as it is currently being developed, will guide participants in a gold supply chain to implement Steps 1 and 2 to improve and professionalize the search for gold supply chain red flags. And by doing so, the OECD Gold Supplement will provide the missing framework and guidance for a gold refiner to perform the reasonable country-of-origin inquiry that the Dodd Frank Act requires, with a strong management system and due diligence practices through which that inquiry will be made. Still more guidance will be forthcoming from three gold industry organizations with worldwide membership and scope: the Responsible Jewellery Council, the World Gold Council and the London Bullion Market Association.

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[5] "For example, one way that an issuer could reasonably rely on a facility's representations regarding the source of its conflict minerals is if the smelter was identified as one that processes only 'DRC conflict free' minerals under recognized national or international standards after receiving an independent third party audit of the source and chain of custody of the conflict minerals it processes." 75 FR 80957, December 23, 2010

These organizations are each developing guidance and standards, and are modifying existing guidance and standards, with regard to supply chain due diligence, and they are all working with the OECD to align their efforts. The OECD Gold Supplement and the three industry guidances and standards are anticipated to be completed early in 2012. Individually and collectively they will provide a basis upon gold supply chain due diligence with regard to conflict should be performed, and upon which an audit can verify a refiner's management system and practices as capable of collecting necessary information and making reliable representations.

This audit will be a performance audit, carried out in conformance with ISO 19011.[6] It will examine a refiner's management system and supply chain due diligence practices, and a sample of due diligence and supply chain transaction records. This step, it should be noted, is potentially a significant burden upon a gold refiner, interrupting its business management, requiring resources, and it cannot be undertaken by each of many, perhaps hundreds, of issuers that have tracked gold in their manufactured products back to a particular refiner. Such multiple individual audits should not, however, be necessary. Again the guidance and standards being developed by the OECD and three industry organizations will come into play; they are seeking to align their efforts so that a single independent third-party audit may be conducted, upon which issuers can rely for verification of a refiner's representations.

That will be the end of Dodd Frank Act compliance for most users of gold; it accomplishes a reasonable country-of-origin inquiry with supplier representations of no DRC Country involvement, verified by a third party audit, that an issuer may deem to be reliable. If, however, the response to an issuer's inquiry is that a refiner does source gold in a DRC Country, another level of assessment is necessary: whether or not acquisition of that gold has directly or indirectly financed actual conflict and abuse of human rights. There may be a wide range of circumstances to such sourcing and its possible involvement in conflict; the ten DRC Countries have an area equal to that of the 48 contiguous United States, and a population of about 200 million, while the area of conflict is much more limited: the eastern region of the DRC.[7] The UN Group of Experts, with on-the-ground investigation, has said that about 4 tonnes of gold are annually produced in North and South Kivu Provinces,[8] the principal area of conflict and control by armed groups.[9] That amount is approximately ten percent of gold mined in the ten DRC Countries.[10] So even if gold has been sourced in the DRC Countries, it is entirely possible that it has not financed the DRC conflict. Nevertheless that possibility is by no means insignificant, and it is clear from the Dodd

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[6] OECD Guidance, p40. While this is contained in the Supplement for Tin, Tantalum and Tungsten, the Gold Supplement is likely to contain the same recommendation.

[7] "North Kivu, South Kivu, and the Ituri District in Orientale Province (hereafter referred to as eastern DRC) continue to suffer from ongoing conflict and violence and are considered war-torn; three countries that border eastern DRC are Rwanda, Uganda, and Burundi." GAO Report to Congressional Committees, Information on the Rate of Sexual Violence in War-Torn Eastern DRC and Adjoining Countries, July 2011.

[8] UN Group of Exports, 2010 Final Report – S/2010/596, November 2010, para. 293. Other estimates are of the same order of magnitude. The U.S. Geological Survey has estimated DRC annual mine production most recently at 2 tonnes (USGS Minerals Yearbook 2009, Table 8). Another informed estimate of DRC national production is 8 tonnes (Philip Olden, Implications for the Supply Chain of Gold and Other Precious Metals, Report to OECD, August 2010, citing GFMS for 2009). In the conflict-affected eastern region, one estimate is 6.5 tonnes (BSR, Conflict Minerals and the Democratic Republic of Congo, May 2010). A leading human rights NGO has estimated 5 tonnes (The Enough Project, reported by CBS News – 60 Minutes).

[9] "In North and South Kivu, the illegal exploitation and trade of natural resources by armed actors, including criminal elements of the FARDC, continued to prolong the conflict, facilitate the purchase of small arms to commit abuses, and reduce government revenues needed for increasing security and rebuilding the country." U.S. Department of State, 2010 Human Rights Report – Democratic Republic of the Congo

[10] And it is less than one tenth of one percent of global production of more than 4000 tonnes.

Frank Act that the burden of proof is upon the issuer; gold known to be sourced anywhere in the DRC Countries must be rigorously investigated, and that investigation must be audited.

Depending upon the circumstances, that investigation may be extremely difficult, and may be impossible. Gold sourced from a formal mine, such as the formal mining operation in Tanzania, might be more easily investigated; gold produced by artisan miners in South Kivu Province would certainly not. There is not yet an undertaking by the ICGLR to establish a framework by which such an investigation might be guided, or on which it might rely. Therefore it must be undertaken from scratch. A gold refiner is unlikely to carry out or finance such an in-country investigation; it is potentially very expensive and highly risky, involving an on-the-ground assessment team with multiple capabilities and a wide range of experience.[11] There are no formal gold refining operations in the DRC Countries, and the small revenue margins for gold refining outside of those countries will not support such an investigation. The in-country on-the-ground investigation must therefore be undertaken by gold supply chain participants that are themselves in-country; for practical purposes, that means the DRC Country mining operations. That may be highly complex, but the OECD Gold Supplement and the initiatives of the World Gold Council and Responsible Jewellery Council, all anticipated in early 2012, should greatly assist both in guidance to mining operations and in establishment of standard by which their in-country on-the-ground due diligence for Dodd Frank Act compliance may be audited. This will also be a performance audit, but it will clearly be very different from the audit of a gold refiner's representations that it does not source gold in the DRC Countries.

As may be clear, we support the suggestion of the Commission, also made in its Roundtable inquiries, that applicability of the Dodd Frank Act to gold will be better for all concerned stakeholders if it follows the OECD Gold Supplement, particularly as it will align with three major gold industry initiatives. We understand that this may involve a deferral of application until completion of the Gold Supplement and these initiatives, anticipated in early 2012.

Thank you again for the opportunity to comment, and please advise us if you have questions or would like to have additional information.

Respectfully,

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cc. John Bullock

[11] OECD Supplement on Tin, Tantalum and Tungsten, Appendix, Guiding Note for Upstream Company Risk Assessment.