Good afternoon. My name is Darren Fenwick and I represent the Enough Project. The Enough Project's ("Enough") mission is to end genocide and crimes against humanity in Africa.

I would like to thank the SEC for holding this important roundtable. Enough supports a collaborative process to draft a workable rule which effectuates the law.

Congress, in enacting Dodd Frank Section 1502 made certain findings and determined that issuers (as defined in the law) should disclose certain information. This information would provide transparency on the use of conflict minerals that have financed and continue to finance a decade-long conflict in the region.

To date, the legislation has had a measureable impact, which will make it easier and cheaper for issuers to comply with the law and its implementing regulations:

On the ground, the Congolese army has vacated several major mines while 170 Congolese mining police have been trained by the UN and deployed at mine sites.

At the industry level, the electronics industry has put in place the EICC Conflict-Free Smelter program to audit smelters; the tin industry has put in place a bag-and-tag minerals tracing initiative in Rwanda and some parts of Congo and HP has joined Motorola in its "Solutions for Hope", a pilot initiative to source conflict-free tantalum from the region.

At the governmental level, the Congolese government is now starting to arrest and prosecute minerals smugglers. Further, on September 6, the Congolese Ministry of Mines announced that "all mining operators, be they companies or individuals, are obliged to exercise, at all level of supply…the specific Due Diligence recommendations of the OECD".

We have heard much concern about a de facto embargo of minerals from the region. Such an embargo does not yet seem to have occurred. Rather, these steps by the Congolese government show that it is acting to prevent an embargo. Mining remains ongoing in Northern Katanga province, Maniema province, and continues to a lesser degree in North and South Kivu. Robust regulations will help promote and increase the legitimate extraction and trade of minerals from the region by providing guidance on how to comply with the already effective law.

To effectuate Section 1502, the SEC must promulgate strong rules. In addition to its previously submitted comments, Enough urges the SEC to issue rules as follows:

1. **Reasonable Care Standard**

An issuer's due diligence and reasonable country of origin inquiry should be conducted under a reasonable care standard that requires more than a passive acceptance by the filer of information provided by their suppliers. Reasonable care does not mandate that an issuer always reach the legally correct conclusion, but does require sufficient investigation by an issuer to support reasonable cause to believe in the conclusion. This is a recognized standard under the securities

laws. For example, issuers must have a reasonable basis for the statements made in an issuer's filings. And, under the Foreign Corrupt Practices Act, issuers must do more than simply accept representations that those withwhom they contract are complying with the law.

2. Cost

Industry estimates of cost of compliance seem significantly inflated. What due diligence requires filers do is to map their supply chains associated with certain minerals from certain countries. This is a focused and limited requirement.

NAM has estimated that this will cost an average of $200,000 per company based on two hours per contract at $50/hour and 2000 suppliers. Contrast that with Apple, an electronics giant, which examined its supply chain and found that it has a total of 142 suppliers of conflict minerals. Even assuming that NAM's estimates for human resources costs for implementation of these regulations are accurate, it would cost a huge company like Apple a total of $14,200 to alter contracts, and this is a one-time cost.

3. Due Diligence and Reasonable Country of Origin Inquiry

The OECD due diligence guidelines should be used by the Commission as an example of how companies can exercise due diligence. The Commission should state that a reasonable country of origin inquiry should be tied to a process that identifies the origin of the ores at the smelter level. Providing guidance, in the form of examples, of how filers can satisfy their obligations under section 1502, provides issuers the guidance they need to ensure they comply with the law.

4. Recycled and Scrap Material

Enough strongly agrees with the Commission's approach to recycled materials. Such an approach is consistent with the conflict free smelter program which will "confirm details of the supplying source of the excluded recycled/scrap to ensure the material conforms to the definition."

5. Mining as manufacturers

Enough would like to reiterate its previously submitted comments on this issue. Enough agrees with the Commission's decision to consider mining issuers as persons who are manufacturing conflict minerals when they extract those minerals. See 75 Fed. Reg. 80948, 80953 (Dec. 23, 2010). This is consistent with national and international norms. As noted in footnote 5 of our initial submission, the United States Controlled Substances Act's definition of manufacture includes "production… either directly or indirectly by extraction from substances of natural origin." 21 U.S.C.A. § 802(15) (2007). Similarly, the OECD's due diligence guidelines apply to miners and the due diligence guidelines drafted by the UN Group of Experts and adopted by the UN Security Council state that due diligence should apply to "individuals and entities prospecting, exploring for and extracting minerals…" UN Group of Experts at 84.

6. Stockpiles

The Commission should impose reasonable limits on any exemption of stockpiled materials. Stockpiled minerals may have originated in mines that support the conflict; however, it would be impractical to ask companies to trace the origin of these minerals. These minerals should be exempt as long as companies can document that the minerals in the stockpile pre-dated the implementation of Exchange Act Section 13(p).

7. Contract to Manufacture

Enough agrees with the approach articulated in the Commission's Proposed Rules. Indeed, it would undermine the purpose of Section 1502 to exclude from its application companies that contract for the manufacture of their products. Since conflict minerals are most commonly used in electronics and other technological products that may be manufactured by a different entity than the one that brands, markets, and profits from the product, a narrow-reading of Section 1502's application would be contrary to its purpose. It would also invite companies that currently manufacture their products to contract out that manufacturing in order to evade the disclosure requirements.

Further, applying Section 1502's disclosure requirements to companies that contract for the manufacture of their products is consistent with well-established legal principles. For example, a company that labels a product as its own cannot avoid liability for injuries that product may cause by simply showing that it contracted for the manufacture of that product. Similarly, a company that holds itself out as the owner and/or proprietor of a product cannot avoid legal responsibility simply because an agent manufactured the product.

8. Contractual Obligations

Many companies and industry associations have argued that issuers will have to wait years before they are able to renegotiate their contracts with their suppliers to collect the information necessary to comply with Section 1502. Because Section1502 is a disclosure statute and only requires issuers to disclose certain information about the origin of the minerals in their products, the argument that issuers will have to renegotiate their contracts is without merit. Most, if not all, commercial contracts include a clause that requires suppliers to comply with all applicable laws, statutes, and regulations related to its performance under the contract[1].

[1] See Boeing Environmental Compliance Provision --

All BCA contracts include the environmental compliance expectations of The Boeing Company.
Seller shall be responsible for complying with all laws, including, but not limited to, any statute, rule, regulation, judgment, decree, order or permit applicable to its performance under this Contract.
Seller further agrees

9. Gold

Gold is not as different as various parties have suggested. Gold has a similar 6-step supply chain as tin, tantalum, and tungsten, and the refiner is a similar chokepoint in the supply chain as the smelter. The main difference is that gold is also used as a currency, but this does not affect the chokepoint being the refiner, and the ability for refiner audits to take place. The Commission should not delay regulations related to gold until other regulatory bodies such as OECD finalize their guidelines, which are due to be published in November/December. Section 1502 does not allow for such delay.

Importantly, there are already smelter audit programs in place for gold through the EICC. The World Gold Council will issue its final audit program in early 2012. Issuers who use or manufacture gold that is necessary to the functionality of their product have the ability to comply with regulations already. Again, Section 1502 does not require the elimination of conflict minerals from an issuer's products. Gold companies are obligated to make the disclosure required by the law. There are already processes in place that will enable them to do so.

Enough recognizes that regulated persons may obtain minerals from the same sources and The SEC should promulgate rules that will allow regulated persons to utilize information obtained from an independent audit conducted by an industry group or trade association.

Conclusion

I want to take this opportunity to thank John Fieldsend, Felicia Kung and Paula Dubberly for their commitment and dedication to crafting a strong and workable set of rules that will effectuate congressional requirements contained in Section 1502 of the Dodd-Frank Act.

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1. to notify Buyer of any obligation under this Contract which is prohibited under any applicable environmental law, at the earliest opportunity but in all events sufficiently in advance of identification of alternative methods of performance, and
2. to notify Buyer at the earliest possible opportunity of any aspect of its performance which becomes subject to additional environmental regulation or which Seller reasonably believes will become subject to additional environmental regulation during performance of the Contract