spi the plastics industry trade association

November 9, 2011

Via E-Mail

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Comments on Behalf of The Society of the Plastics Industry, Inc. (SPI) Regarding Regulations Implementing the Conflict Minerals Provisions of the Dodd-Frank Act; File No. S7-40-10

Dear Ms. Murphy:

We appreciate the opportunity to submit these comments to the U.S. Securities and Exchange Commission (SEC) in response to the Agency's proposed rules regarding the Conflict Minerals provision (Section 1502) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act).[1] We are writing on behalf of the Society of the Plastics Industry, Inc. (SPI), a trade association whose member companies manufacture plastic materials used in a large range of applications and whose members could be significantly affected by regulations implementing the conflict minerals reporting requirements.[2] SPI fully supports the efforts to end the humanitarian crisis in and around the Democratic Republic of Congo and the intent of the initiatives put in place in the legislation. SPI's members believe, however, that the SEC's implementing regulations should carry out Congress's intended policy goals in a way that does not create undue burdens on industry and decrease American competitiveness.

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1 75 Fed. Reg. 80,948 (proposed Dec. 23, 2010) (to be codified at 17 C.F.R. 229 and 249). See also 76 Fed. Reg. 63573 (October 13, 2011) (announcing October 18, 2011 roundtable discussion on the SEC's rulemaking on Section 1502 of the Dodd-Frank Act and extending the comment period).

2 The Society of the Plastics Industry, Inc., which was founded in 1937, is the trade association representing the third largest manufacturing industry in the United States. SPI's members represent the entire plastics industry supply chain, including processors, machinery and equipment manufacturers and raw material suppliers. The U.S. plastics industry employs nearly 1 million workers and provides more than $327 billion in annual shipments. SPI's Food, Drug, and Cosmetic Packaging Materials Committee has worked for over 50 years with the U.S. Food and Drug Administration and counterpart agencies around the world on development of fair and effective regulation of food-contact materials based on sound science and good public policy.

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Through these comments, SPI urges the Commission to expressly state that the reporting and recordkeeping requirements of Section 1502 apply only to manufacturers that use the four conflict minerals – cassiterite, columbite-tantalite, wolframite, and gold – and the three additional enumerated derivatives – tungsten, tin, and tantalum. SPI's members believe that the rule should clarify that the reporting requirements do not extend to compounds that are formed from a covered metal derivative, because these substances are no longer metals or alloys thereof. The potential extension of the reporting requirements from covering metals and alloys to include organic chemical compounds that contain these metals, which are used in very small quantities as catalysts, stabilizers or polymerization aids to produce a wide array of plastic raw materials, products and components used in all sectors of manufacturing industry, would needlessly expand the reporting requirements of the rule and drastically increase the cost and administrative burden of the rule to the manufacturing industry and to the SEC without a commensurate benefit to reduce trade in conflict minerals. The manufacture and use of these chemical compounds is too attenuated from the original source of the mineral. SPI's members request that organic metal compounds used as catalysts, polymerization aids, and stabilizers in plastic materials and coatings be explicitly exempt from the reporting and recordkeeping requirements of the regulation. The remainder of this letter further details the rationale behind our request.

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SPI member companies are engaged in the production of plastics and plastic related materials. As well as being the third largest manufacturing industry in the United States, plastics play an essential role in our society as the building blocks for everything from automobile parts, to medical equipment and beverage bottles. Plastics are synthesized through a process that converts basic chemical building blocks (monomers) into higher molecular weight repeating units called polymers, which are the plastic materials that we utilize in our daily lives. In some cases, manufacturers may use various catalysts to initiate the polymerization of the building block monomers, improve the efficiency of the chemical process, or control specific parameters of the final product. In other situations, stabilizer compounds are used to protect plastics from degradation.

Organometallic compounds, which include catalysts, stabilizers, and polymerization aids, are commodity chemicals used in the production of widely used raw materials – silicones, polyurethanes, vinyls and polyesters – that are in turn used in all sectors of the manufacturing industry.[3] The element tin and to a lesser extent tungsten, undergo a series of complex chemical reactions before they are converted into their useful catalytic forms. In the case of tin, for

[3] For, example, silicones are found in food ingredients, housewares, lubricants, sealants and medical devices; polyurethanes are used in printing inks, protective coatings, footwear and adhesives; vinyls are used in blood bags, packaging, pipe, siding, flooring and windows; and polyesters can be found in personal clothing, durable fibers, beverage containers and sterile packaging for food and drugs.

example, an intermediate compound is generated first by reacting tin metal in the presence of chlorine gas. The intermediate tin tetrachloride compound then undergoes further chemical reactions with any number of organic substrates to produce an organotin compound. The final compounds are substances such as stannous octoate, monobutyl tin trichloride, and dioctyltin dilaurate. These substances contain tin but have several organic groups chemically bound to the tin nucleus and are compounds that are materially and chemically distinct from metallic tin. The chemical reaction that tin undergoes to form new compounds can be likened to the reaction between sodium metal and bicarbonate to form baking soda. One would not associate baking soda with sodium, the metal; this is because the chemically bonded end product, baking soda, is materially and chemically distinct from the starting sodium metal from which it is formed. Likewise, the chemical reactions that tin and other metals undergo to form new organic compounds can be likened to the reaction between sodium and vegetable oils to form soap. One would not associate soap with sodium, the metal; this is because the chemically bonded end product, soap, is materially and chemically distinct from the starting sodium from which it is formed. Because the wide spread use of organotin in many manufacturing sectors has not yet been recognized by manufacturers, supply chains, or regulators, the cost implications of including organic tin compounds in the scope of the conflict minerals reporting requirements are currently significantly underestimated.

While there are several intervening chemical reactions that occur before low levels of metallic tin or other metals are converted into useable forms for the plastics industry, it is conceivable that SPI members could be subject to the reporting and disclosure requirements of the Act because the SEC's proposed rules do not clearly and unambiguously exempt chemical compounds derived from the affected minerals. Paragraph (e)(4) of the Conflict Minerals provision defines "conflict minerals" as cassiterite, columbite-tantalite, gold, wolframite, or their derivatives, or any other minerals or their derivatives determined by the Secretary of State to be financing conflict in the Democratic Republic of Congo and adjoining countries.[4] Tin is a derivative of cassiterite, and tungsten is a derivative of wolframite. The broad use of the term "derivative," however, leaves open the possibility that chemical compounds formed from tin or tungsten metals also may be interpreted as coming within the "conflict mineral" definition under the Act. SPI does not believe Congress intended these chemical compounds to be subject to the law.

To the extent tin- or tungsten-containing chemical compounds are used to catalyze polymeric reactions or stabilize plastic materials, the compounds are added at extremely low levels in the formulation, typically at levels of less than 0.1% by weight but often in the low parts per million. Apart from their low use levels, these chemical compounds often are washed out of the polymer and reclaimed, reprocessed, or reused. Some very small amount of residual catalyst

[4] Section 1502(e)(4) of the Dodd-Frank Act.

may be present in a finished plastic product, but again these levels would be in the range of parts per million, or less. Any residual tin or tungsten metal found in the plastics would be present only as an unintended impurity or byproduct of the chemical synthesis.

The accidental or unintended presence of any conflict minerals in a company's products appears to be exactly the type of situation Congress intended to exempt. In comments to the Commission, the authors of Section 1502, Senator Durbin and Congressman McDermott, stated the following:

> Since it is the policy of Section 1502 to require transparency of all sourcing of conflict minerals from the DRC and its adjoining countries, we used the phrase "essential to the manufacture of" to include all uses of conflict minerals coming from DRC – *except those that are "naturally occurring" or "unintentionally included" in the product*. . . . All uses of conflict minerals that originate from DRC and adjoining countries that are not naturally occurring (e.g., vegetables) or *are purely unintentional byproduct* (e.g., tuna cans) need to be subject to reporting and transparency. (emphasis added)[5]

The letter makes clear that the legislators do not intend for the law to cover every conceivable product where tin might find its way into a product in some form. Like the unintentional byproduct example of low levels of tin in tuna fish as a result of the packaging of the tuna in tin cans, we believe that the use of tin to form new chemical compounds that are subsequently used at small levels in plastic materials should not be subject to reporting or recordkeeping requirements.[6]

The sponsors of the Conflict Minerals provision have advised the Commission that the reporting and disclosure obligations are intended to be imposed only where the conflict minerals, themselves, are intentionally used for a specific purpose in the final product or during its manufacture. Thus, SPI requests that the Commission's final rules be written to make clear that the rules apply only to manufacturers that use the conflict minerals cassiterite, columbite-tantalite, wolframite, and gold, or specifically their tungsten, tin, and tantalum derivatives, and that the obligations do not extend to users of chemical compounds that have been further synthesized from these elemental metals.

Not exempting these organometallic compounds will be an onerous burden on plastics manufacturers. It is the final compounds of tin that function as the catalysts for polymerization to produce the plastics. These compounds are covalently bonded new chemical species in non-

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[5] Letter to the Hon. Mary L. Schapiro, Chairman, SEC, from Richard J. Durbin, U.S. Senator and Jim McDermott, U.S. Congressman (October 4, 2010).

[6] We do not believe that Congress intended to exclude the use of tin in the plating of tin cans.

metallic forms; they are not simply metal alloys of tin. Plastics manufacturers purchase their catalysts from the manufacturers, from distributors, or from master batch suppliers that compound several types of polymerization aids into a concentrated "pre-polymer" that assists in dispersing these substances in the reaction vessel. By the time any metal-containing catalyst reaches the manufacturer of the plastic, it is far removed from any originally metallic form that was used in the manufacturing process.

As noted above, organometallic catalysts are commodity chemicals used in the production of a number of different types of polymers. Under the typical purchasing scheme for these types of chemicals, there are no reasonable mechanisms in place for the purchaser to track from which region the constituents of the chemical were mined or obtained. Given the number of chemical steps that occur before the tin is converted into a form that is utilized by SPI members, companies would need to trace several steps through their supply chains to determine in the first instance whether a conflict mineral was used as a catalyst component and, if yes, whether the metal constituent was supplied from the affected region. In consideration of the number of chemical conversions that would occur before any material containing a conflict mineral reaches a plastics manufacturer or downstream user of a plastics material, these companies are not in the best position to determine the minerals' origins when they were in their metallic states.

Moreover, because any disclosures would be part of a company's public filings with the SEC, a company in effect would be obligated to release proprietary formulation and manufacturing information regarding its products to comply with the law. SPI's members would be harmed from a business standpoint if required to disclose this confidential information in a public forum. The use of a specific catalytic complex in a manufacturing process typically is afforded the highest degree of confidentiality within the industry.

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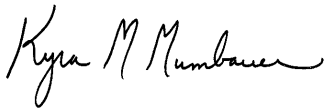
In summary, SPI urges the Commission to expressly state in the final rules that the reporting and recordkeeping requirements of Section 1502 apply only to manufacturers that use the four conflict minerals – cassiterite, columbite-tantalite, wolframite, and gold – and the three additional enumerated derivatives – tungsten, tin, and tantalum. SPI requests that the Commission's final rules be written to make clear that the requirements do not apply to metal containing organic compounds that may be derived from conflict minerals as defined in the Act, where the compounds are used as catalysts, stabilizers, or aids to polymerization in the manufacture of plastics. SPI appreciates the opportunity to submit comments on these important issues. We are available to discuss any of the positions presented herein with Commission staff. Should you have any questions, please do not hesitate to contact me.

Sincerely yours,



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