

COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATION
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November 28, 2011

The Honorable Mary L. Schapiro
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Via e-mail: rule-comments @sec.gov

Re: SEC Initiatives under the Dodd-Frank Act – Special Disclosures Section 1502 (Conflict Minerals) File Number S7-40-10
RIN 3235-AK84
CODSIA Case 18-11

Dear Chairman Schapiro:

The Council of Defense and Space Industry Associations (CODSIA)¹ appreciates the opportunity to comment on the proposed rule issued by the Securities and Exchange Commission on Conflict Minerals (RIN 3235-AK84.) In 1964 the Department of Defense urged the industry associations with common interests in federal procurement policy to establish a group to act as a unified voice for industry on federal procurement policy. CODSIA currently consists of six industry trade associations and through the company members of those associations represents thousands of federal government contractors nationwide on acquisition policy issues. This unique status as the conveyor of regulatory comments for some of the largest trade associations working on acquisition policy also represents the collective expertise of these associations and the companies they represent.

Phased-in Uniform world-wide standards

These comments do not take exception to the basis for the proposed rule or the rationale behind it. The atrocities that continue to take place in the Democratic Republic of the Congo have properly invited the world's attention and action. Our interest in commenting on the SEC's proposed rule on Conflict Minerals is to endorse the development of a single workable, reliable approach companies can use to comply with Sec. 1502 of the Dodd-Frank Act. The phased-in regulatory approach outlined in the comments filed on this proposed rule by the National Association of Manufacturers² and indirectly endorsed by the U.S. Department of State are one such initiative. We were pleased to see that the State Department issued a statement on July 15, 2011 in which it is recognized that development and implementation of an approach to due diligence "*will take time.*"³ [Emphasis Added] The State Department cites the OECD initiative and the United Nations Security Council DRC Sanctions Committee's Group of Experts efforts to develop a roadmap for due diligence

¹ The current members of CODSIA are the Aerospace Industries Association, the American Council of Engineering Companies, the National Defense Industrial Association, the Professional Services Council, TechAmerica and the U.S. Chamber of Commerce.

² Most CODSIA members contributed to the comments filed by the National Association of Manufacturers and endorse the position expressed therein.

³ Statement of the Bureau of Economic, Energy and Business Affairs, U.S. Department of State, July 15, 2011.

activities and alludes to the efficacy of combining these initiatives. We urge the SEC to recognize that common sense argues for writing a regulation that allows U.S. companies to rely on the ongoing work of the IPC, EICC-GeSI and others, with guidance that is expected to emerge from the OECD pilot program, for purposes of certification of their own due diligence efforts required by the SEC.

Impact on U.S. Industry

We believe that the impact implementation of Section 1502 of Dodd-Frank will have on the government contracting community in general and the defense contracting community specifically adds to the arguments for creating a viable, effective regulatory approach over time rather than require compliance with every aspect of the reporting and due diligence in the span of one year.

Section 1502 requires publicly held companies to disclose when “conflict minerals” are functionally necessary to any of their products and, if so, to report if the tin, tungsten, tantalum and gold they use is “conflict-free.” Each company is required to perform due diligence to determine the chain of custody of the minerals it uses from the mine to the end product when the minerals come from the DRC or surrounding countries and report on those findings. A private audit of their process and findings is also required by the legislation when the minerals are not “conflict-free.” Exactly how that due diligence and investigation must be conducted isn’t specified.⁴

The task for each individual company is daunting and the absence of assurance that a properly followed process will suffice and be certifiable poses a risk that will encourage many commercial entities to seek to use minerals that are not mined in the region. The Department of State and the government of the Democratic Republic of the Congo have expressed their views that such a “de facto” boycott of conflict minerals mined in the DRC and adjoining countries would be damaging to the region and urge judicious implementation of the requirements in Section 1502.

Cost to the U.S. Defense Community

The U.S. Department of Defense is a significant if not a monopsonistic customer of many of the contractors and subcontractors who manufacture major weapon systems, subsystems and components. DoD acquisitions are replete with aerospace and electronic equipment that will contain ubiquitous metals like tin, tantalum, tungsten and gold. DoD contractors and the Department of Defense will have to shoulder this additional compliance expense whether the implementation costs of the Conflict Minerals proposed rule approximate the \$7.93 billion cost of compliance calculated by the Payson Center of Tulane University or the \$9B to \$11 billion calculated by NAM.

Any additional financial burden may have implication for the U.S. national security budget and we recommend to the Commission that a compliance regime, phased-in over time, will partially mitigate the impact of this additional cost of providing for the national defense. At a time when the United States is drastically cutting its defense budget and companies in the defense market are cutting costs and jobs to survive a shrinking defense market and comply with pressures from its defense customer to trim overhead expense, it is hoped that the U.S. government will seek to be judicious about the direct compliance costs imposed by this rule. The NAM letter to the SEC outlines an approach that would (1) spread initial compliance costs over a period of three years; (2) minimize the cost of compliance with overlapping approaches and allow the self-regulatory tools now being developed at the IPC, and EICC with the OECD efforts to develop a roadmap for due

⁴ H.R. 4173, Section 1502(b), The Dodd-Frank Act

diligence to mature to the point that the SEC could incorporate elements of that roadmap guidance or into regulation; and (3) maximize the chances of putting a successful mechanism in place. Absent a phased-in approach, the quickest way of achieving compliance will be to avoid using any conflict minerals from the DRC region and will create, in effect, the boycott that the U.S. Department of State and the DRC want to avoid and cannot afford.

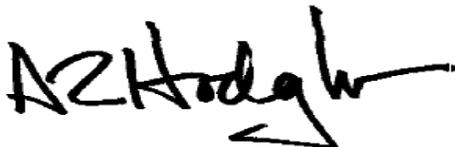
Conclusion

We do not seek a separate solution for the U.S. defense industry. We ask that any SEC regulation set deadlines for certain steps so as to allow the useful incorporation of the private self-regulatory tools under development, as well as the strategy required in Section 1502(c) which mandates a “plan to provide guidance to commercial entities seeking to exercise due diligence on and formalize the origin and chain of custody of conflict minerals used in their products and on their supplies to ensure that conflict minerals used in the products of such suppliers do not directly or indirectly finance armed conflict or result in labor or human rights violations.”⁵

We believe that the timeline for implementation has implications for national security in the United States and recommend to the Commission that a compliance scheme that is spread out over time will mitigate the impact on defense budgets in the coming year.

We thank you for considering our comments, although after the comment deadline. If you have any questions, please do not hesitate to contact Bettie McCarthy, CODSIA’s Administrative Officer at 703-875-8059 or codsia@pscouncil.org.

Sincerely,



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⁵ H.R. 4173, Section 1502(c)(1) (B)(ii)

SEC Proposed Rule on Conflict Minerals



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