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By EMAIL

January 27, 2011

To: U.S. Securities and Exchange Commission ("Commission")
Ms. Elizabeth M. Murphy, Secretary
100 F Street NE
Washington, DC 20549-1090, U.S.A.
S.E.C. File Number: S7-40-10

Dear Commission,

As a foreign private issuer listed on the New York Stock Exchange, Taiwan Semiconductor Manufacturing Company Ltd. ("TSMC") hereby respectfully submits its comments on the proposed rules to implement Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Proposed Rules[1]").

I. All doubts raised by comment letters should be resolved in favor of the approach that imposes the least amount of burden, cost and liability.

Our compliments to the Commission for trying to formulate rules on a matter that sounds as if would fall within the purview of the U.S. State Department. We understand that rulemaking is a tough process, especially when comments serve competing interests. Often times the Commission must make a hard decision by drawing the proverbial line in the sand in order to serve the underlying objectives of the Securities Acts[2], such as protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation ("Core Securities Principles").

Although Section 1502 appears in a law entitled the "Wall Street Reform and Consumer Protection Act", it has nothing to do with 'Wall Street Reform' or 'Consumer Protection'. Instead, Section 1502 appears to serve a purely political agenda against certain "armed groups" within the African DRC region by discouraging companies to use "conflict minerals" from that region in their products (and attaching stigma to those that

[1] This letter will use some of the same terms as defined in the Proposed Rules, like "DRC Region".
[2] "The mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation." http://www.sec.gov/about/whatwedo.shtml

do so). The Proposed Rules require companies to make a political determination as to whether their products contain minerals that "directly or indirectly finance or benefit armed groups[3]" in the DRC region. The officious "reasonable investor" appearing often in securities law cases would hardly think that the Proposed Rules could ever serve Core Securities Principles. Even the Commission feels that the purpose of Section 1502 "is qualitatively different from the nature and purpose of the disclosure of information that has been required under the periodic reporting provisions of the Exchange Act[4]." We agree with the Commission's insight. It is hard to imagine how assessments about AK-47 toting armed groups in the DRC region (an area remote from the activities of high international finance) would promote the efficiency of capital raising in the U.S. markets or bust insider trading expert network rings?

Since the reasonable investor would agree that the Proposed Rules is unrelated to Core Securities Principles, we ask the Commission to resolve all controversies raised by the comment letters on the Proposed Rules in favor of adopting final rules that impose the least amount of burden, cost and liability ("Deferential Standard").

II. Principles of international comity & respect warrant exempting foreign private issuers from the Proposed Rules.

Foreign private issuers ("FPI") already have their U.S. compliance plates full: cumbersome and costly Sarbanes-Oxley governance and reporting requirements, the risk of U.S. securities law liabilities, the existence of improved foreign exchanges on which to list outside of the U.S., sufficient availability of capital overseas and continuing management distractions that arise from the significant efforts needed to comply with U.S. disclosure and reporting rules. Even though compliance complying is costly, we feel that such costs are necessarily incurred because it provides an assurance to our investors that their investments are safeguarded under a world-class corporate governance regime. But we do not feel that costs in time and money are ever justifiable when we are required to comply with rules that don't promote Core Securities Principles[5]. Therefore, we ask the Commission to exempt FPI from the Proposed Rules entirely for the following reasons.

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[3] Section 1502(b)(1)(D).

[4] Proposed Rules at p. 51.

[5] Imposing cumbersome rules that are unrelated to Core Securities Acts Principles encourages FPI to delist and exit the U.S. capital markets. Ever since the passage of SOX, the number of delisting FPI has been on the rise. "Among the companies delisting from NYSE are German companies BASF, Bayer, SGL Group, E.ON, and Allianz, as well as UK giants British Airways, Imperial Chemical, and Wolseley and Danone and Sodexho from France, Ducati and FIAT from Italy, Norsk Hydro from Norway, and Van der Moolen from the Netherlands stand out due to the size and renown of the companies." http://currents.westlawbusiness.com/Article.aspx?id=abd96893-cbe7-4a49-9232-0149f9facbec

II. A. Recent U.S. Supreme Court holding rejects presumptive extraterritorial application of U.S. laws.

In June 2010, the U.S. Supreme Court set forth a canon of statutory construction that applies directly on the present issue by ruling that any Congressional intent to give laws extraterritorial effect must be clearly and expressly stated. As Justice Scalia wrote, "[w]hen a statute gives no clear indication of an extraterritorial application, it has none." *Morrison v. National Australian Bank*, 561 U.S. ____ (June 24, 2010) (No. 08-1191), at p.6[6]. This presumption against extraterritorial effect applies "in all cases"[7].

Nowhere in Section 1502 does Congress explicitly say that the conflict minerals reporting requirements apply extraterritorially to FPI. We respectfully disagree with the Commission's interpretation in this regard when the Commission stated in its Proposed Rules that as: "[t]he statutory language does not suggest an exemption for foreign private issuers...our proposal, therefore, would cover those issuers[8]." Such a construction of Section 1502 presumes that the law applies extraterritorially. But the *Morrison* court expressly rejected such a presumption. According to the canon of statutory construction as set forth in *Morrison*, the statutory language of Section 1502 must expressly say that it applies to foreign private issuers. But Section 1502 fails to clearly express any intent for it to apply extraterritorially. Therefore, according to the *Morrison* canon of statutory construction, Section 1502 has no extraterritorial application. The Commission has no authority to reverse the presumption *against* the extraterritorial application (as set forth by the *Morrison* court) into a presumption in favor of extraterritorial application.

The Commission itself seems to be unsure whether Section 1502 applies to FPI because it is seeking comments on this very issue[9]. It is our position that the

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[6] The Supreme Court held that "it is a 'longstanding principle of American law 'that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.' *EEOC* v. *Arabian American Oil Co.*, 499 U. S. 244, 248 (1991) *(Aramco)* (quoting *Foley Bros., Inc.* v. *Filardo* , 336 U. S. 281, 285 (1949)). This principle represents a canon of construction, or a presumption about a statute's meaning, rather than a limit upon Congress's power to legislate, see *Blackmer* v. *United States* , 284 U. S. 421, 437 (1932) . It rests on the perception that Congress ordinarily legislates with respect to domestic, not foreign matters. *Smith* v. *United States* , 507 U. S. 197 , n. 5 (1993). Thus, 'unless there is the affirmative intention of the Congress clearly expressed' to give a statute extraterritorial effect, 'we must presume it is primarily concerned with domestic conditions.' *Aramco* , *supra* , at 248 (internal quotation marks omitted). The canon or presumption applies regardless of whether there is a risk of conflict between the American statute and a foreign law, see *Sale* v. *Haitian Centers Council, Inc.* , 509 U. S. 155, 173–174 (1993)." *Morrison*, at p. 5. This canon of statutory construction has not been specifically altered by supervening acts of Congress.

[7] *Morrison* at p. 12 (emphasis added).

[8] Proposed Rules at p. 15

[9] See Proposed Rules, Request for Comment #4, at p.16

Commission has sufficient basis to exempt FPI from the Proposed Rules based on the canon of statutory construction as set forth in the U.S. Supreme Court's decision in *Morrison*. If the Commission has any doubts in this regard, we ask the Commission to resolve it per the Deferential Standard as discussed earlier.

II.B. The Proposed Rules should not apply to FPI because they serve U.S. national interests, and not the interests of FPI home countries.

The Proposed Rules serve U.S. national interests only. This is because Section 1502(b)(3) allows the Commission to revise or waive the Proposed Rules if the U.S. President determines it is in the U.S. "national security interest" to do so[10]. Section 1502(b)(3) would be entirely superfluous if the Proposed Rules were not intended to serve U.S. national interests. It violates international principles of diplomatic comity to conscript the private entities of foreign sovereign nations to serve U.S. national interests[11]. The Proposed Rules would require FPI to serve U.S. national interests irrespective of the national interests of their respective home countries, even when the laws of their FPI home countries permit the free and unfettered trade of products containing minerals from the DRC region. Private foreign companies should not be conscripted into serving the changing interests of U.S. partisan agendas.

Further, as Section 1502(b)(3) does not require the U.S. President to consider the national security interests of any other countries, principles of reciprocity dictate that the Proposed Rules should not apply to FPI.

II. C. Proposed Rules have not considered their effects on long established diplomatic practices and customs of FPI home countries.

It is arbitrary and capricious for a rulemaking agency to "entirely fail[] to consider an important aspect of [a] problem." (See complaint of *Business Roundtable, et al. v. SEC* (Sept. 29, 2010) citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). In its release of the Proposed Rules, it is apparent that the Commission did not review the implications of the Proposed Rules on the diplomatic practices and customs of FPI home countries. We urge the Commission to consider the effects of the Proposed Rules on long established diplomatic practices and customs of

[10] Section 1502(b)(3): "[t]he Commission shall revise or temporarily waive the requirements described in paragraph (1) if the President transmits to the Commission a determination that-- (A) such revision or waiver is in the national security interest of the United States...."

[11] This situation is analogous to complaints lodged by the U.S. government against His Majesty's British government for pressing private U.S. merchant ships and sailors into the service of the Royal Navy during the time leading up to the War of 1812.

FPI home countries.

The Proposed Rules threaten to overturn decades of normalized trade relations and commercials affairs between Africa and many FPI home countries. Many foreign nations do not prohibit or restrict[12] or attach certain stigmas carrying negative connotations to trading with African nations.

Requiring FPI to publicly declare that its products are not from the DRC region (even when such companies are unable to determine the source of the conflict minerals or whether these minerals actually benefit armed groups with reasonable certainty) sends a political message[13] to the region that may politically alienate certain African states from the diplomatic efforts of FPI home countries in that region. This will place FPI in an extremely awkward position *vis-à-vis* their respective home country government. In accordance with international comity, FPI should give preference to complying with the rules and foreign policies of their respective home countries (or at the very least not undercut diplomatic efforts by their home governments). Just as U.S. federal rules should not trump, but respect U.S. state law, U.S. federal rules ought not trump the law-making process or diplomatic policies of sovereign foreign entities. *See American Equity Inv. Life Ins. Co. v. SEC*, 613 F.3d 166, 178 (D.C. Cir. 2010) invalidating SEC rule for failure to adequately consider rule's interaction with state law cited in *Business Roundtable, et al* complaint.

The Proposed Rules may even endanger the lives of FPI home country diplomats and businessmen operating in the volatile African region because the Proposed Rules would force FPI to take an economic and political position that might be construed by the locals as one being contrary to the interests of certain African countries.

Further, we are concerned that the Proposed Rules may be used as a vehicle to introduce similar politically motivated rules that appear to serve partisan agendas unrelated to Core Securities Principles. The Proposed Rules set a bad precedent that would encourage future U.S. administrations to politicize the U.S. capital markets. Will issuers, especially FPI, be required to comply with similar rules depending on the changing vicissitudes of U.S. foreign policy? Will there be similar rules that may one day require issuers to declare whether their products are or are not from China, Russia or

[12] Other than the usual export control rules set in accordance with the Wassenaar Convention.

[13] The Proposed Rules would require FPI to make statements as to whether their products are or are not from the African DRC region. As noted above, the Proposed Rules promote what could be construed as a partisan political objective that encourages companies to refrain from using minerals that benefit or finance armed groups in the DRC region (or suffer certain stigmas if they do so).

India? Is it fair to impose politically motivated burdens on FPI when they are barred from influencing U.S. domestic politics[14]? Foreign businesses navigate through volatile commercial waters everyday; they don't need to be dragged into the stormy currents of domestic U.S. politics.

If Congress had intended for Section 1502 to cause such incompatibility with the laws, practices and customs of other countries, they should clearly express such intent. See *Morrison v. National Bank of Australia*, 561 U.S. ____ (2010) (No. 08-1191), at p. 20 "the probability of incompatibility with other countries' laws is so obvious that if Congress intended such foreign application 'it would have addressed the subject of conflicts with foreign laws and procedures.'" Nowhere in Section 1502 are these implications ever addressed: such silence is fatal to applying Section 1502 to FPI.

III. Alternatively, the Proposed Rules should be revised based on the following reasons in accordance with the Deferential Standard.

Although *Morrison*'s presumption against the extraterritorial application of laws is dispositive, other comments on the Proposed Rules follow.

- Proposed Rules may encourage anti-competitive effects and practices in the minerals industry.

If persons are encouraged not to use minerals from the DRC region (which constitutes a significant market for the supply of minerals), then the minerals industry would be concentrated into even fewer hands. An analysis based on anti-trust rules is beyond the scope of this letter. It is recommend that the Commission seek advice from the U.S. Department of Justice, Antitrust Division for comments on such effects on the international minerals market.

- Proposed Rules' requirement that persons state that their products are or are not from the DRC region may have First Amendment implications.

[14] Exempting FPI from the Proposed Rules does not unduly prejudice U.S. domestic persons because U.S. domestic persons have the power to hold Congress politically accountable. Foreign persons and corporations cannot vote in U.S. elections. In principle, U.S. campaign election laws prohibit foreigners from influencing U.S. elections. Any attempt by foreign corporations to influence U.S. politics would risk violating the U.S. Foreign Corrupt Practices Act. There is an insurmountable proverbial 'Chinese wall' blocking any attempt by foreign corporations to influence U.S. politics. If foreign corporations are prohibited from holding Congress politically accountable, then they should be exempt from laws that do not promote core Securities Acts Principles. U.S. domestic persons on the other hand are allowed to vote and participate fully and vigorously in U.S. elections. The interests of U.S. corporations are championed ably by high-powered lobby groups and PACs. Therefore, if U.S. persons wish to be exempt from Section 1502, they have plenty of political ammo to do so.

The "mandated support" of "speech by others" "is contrary to the First Amendment principles set forth" in numerous decisions of the U.S. Supreme Court[15]. Constitutional lawyers may point out that the Proposed Rules could have First Amendment issues in that they force companies to make public statements as to whether their products are or are not from the DRC region. Such statements are inherently political because they convey certain judgments against sovereign governments in the DRC region. These statements are meant to carry certain negative connotations against specific sovereign nation states. Such a requirement is unprecedented. Usually, rules that govern the composition of manufacturing materials (such as the European Union's "Restriction of Hazardous Substances Directive") prohibit a certain chemical compound, usually lead, beyond a certain *de minimis* amount. These rules do not require companies to single out a particular sovereign country or political group and comment on them. Therefore, requiring a company to say that their products are or are not environmentally compliant is not political speech with political implications, but a statement of scientific fact. Here, the proposed rules differ in that they require commercial firms to make statements pregnant with political judgments and connotations.

- Is it arbitrary and capricious for an agency to make rules on matters falling completely outside of its traditional area of competence?

The Proposed Rules will require the Commission to make fine technical judgments about whether a mineral would be "necessary to the functionality or production of a product"? It is extremely difficult to set any reliable standards on "functionality" and "product" because different products nowadays are often marketed and sold together as a single economic entity[16]. Often times, minerals could be used in the production process but would not appear in the final product. Tools and machines may contain conflict minerals that produce other products that do not contain such minerals. These technical judgment calls fall squarely outside of the competence of the Commission whose stated mission is instead "to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation[17]." As such, doing so may expose the Commission to future challenges under the Administrative Procedures Act.

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[15] *Business Roundtable, et al. v. SEC* (Sept. 29, 2010) complaint citing *United States* v. *United Foods, Inc.*, 533 U.S. 405, 413 (2001).

[16] Gold plating is often installed in luxury cars for example to increase the cars' selling price. The difficult question of whether such gold plating is necessary to the cars' "functionality" is a judgment call that seems to be beyond the traditional competence of the Commission (and perhaps one that may be better handled by the U.S. Patent Office instead).

[17] http://www.sec.gov/about/whatwedo.shtml

These Proposed Rules would divert scarce Commission resources away from fulfilling its stated missions such as cracking down on insider trading and implementing other sections of the Dodd Frank Law that bears directly on Core Securities Principles. Therefore, applying the Deferential Standard[18] helps keep down the amount of future controversies.

- Proposed Rules should require reporting in a new form that will not be required to be signed by any executive of the issuer.

Section 1502 does not require that the reporting requirement be made in the 20-F. Putting the minerals reporting requirement in the 20-F unnecessarily increases the scope of the issuer's liability because the 20-F is certified and signed by the CFO and CEO as well as audited by independent accountants. Instead we prefer that the reporting requirement be made in a new form that would not require any certification or signature of the CFO or CEO or auditing by any independent accounts. Our shareholders demand that the time and resources of our CEO, CFO and senior management team be devoted to matters other than worrying about the vicissitudes of the exploits of AK-47 toting guerrillas. This new form should not require any signature at all. Or alternatively, it may be reviewed and signed by any executive designated by the company, such as the head of procurement or environmental affairs.

- The Conflicts Minerals Report, the audit report, and all other related reporting documents should be immune from all Federal securities law liabilities.

The Proposed Rules should state that the Conflicts Minerals Report, the new reporting form (as discussed above), the third party minerals audit report, and any other supporting documents relevant to the Proposed Rules submitted by reporting persons should entirely be exempt from all liability however arising under Federal securities laws and rules. Doing so would not contravene Congressional intent because Section 1502 does not specify any new penalties or liabilities for its breach[19].

The rationale for granting such complete immunity is that courts will be unable to apply a workable measure of damages for computing compensation for any breach of Section 1502. It is easy to compute the measure of damages for insider trading or short

[18] See Section I above.

[19] Failure to comply with Section 1502 would deem the issuer's minerals supply chain due diligence process "unreliable" and therefore, the Conflict Minerals Report 'shall not satisfy' the Proposed Rules. See Proposed Rules p.84. The Proposed Rules currently only exempts the Conflicts Minerals Report from liability for misleading statements under Section 18 of the Exchange Act and the audit report from expert liability (unless the issuer incorporates them by reference into its Securities Act filings).

swing profits. But if the Commission acknowledges that the purpose of Section 1502 is "qualitatively different" from the nature and purpose of the Exchange Act[20], then this means that the usual measures for calculating Exchange Act violations will not be applicable at all to cases where the Conflicts Minerals Report is found to be deficient in some way. What would be the measure of damages for failing to exercise due diligence in preventing products from containing "conflict minerals that directly or indirectly finance or benefit armed groups[21]" in the DRC region? How could a reporter ever be protected from unlimited liability when the measure of damages is the loss of lives and not money, when the stated objectives of Section 1502 are political and not financially based (as in traditional securities law violations)? Reporters will become vulnerable to a new breed of class action lawsuits launched by politically active non-profit organizations pursuing partisan agendas: these suits may well claim that reporters are somehow responsible for the million of lives lost or displaced in the tumultuous DRC region due to even technical violations of Section 1502. Reporters will be hard-pressed to convince insurers to offer insurance coverage for such open-ended liability and drawn out politically motivated lawsuits.

- Reporters should be allowed to rely on supplier declarations to satisfy the "reasonable inquiry" and due diligence tests and use other qualifying language.

As currently drafted, the definition of whether a product contains conflict minerals is purely political: the Proposed Rules require reporters to check whether the conflict minerals appearing in their products "directly or indirectly finance or benefit armed groups[22]" in the DRC region. Obviously, it is hard to make such political determinations because reporters are often unable to control or otherwise influence the manner in which minerals are actually mined, processed, smelted, refined, traded, financed, shipped, and/or handled throughout the long and complex international supply chain.

Therefore reliance on supplier declarations should be sufficient to satisfy both the "reasonable inquiry" and due diligence standards in the Proposed Rules.

We also support the use of qualifying statements to limit or absolve reporter liability. For example, we support the comment made earlier: "it is not possible for issuers in every instance to determine definitively the origins of certain conflict minerals, so it suggested that our proposed rules should thus create a mechanism by which entities can make a

[20] Proposed Rules at p. 51.
[21] Section 1502(b)(1)(D).
[22] Section 1502(b)(1)(D).

disclosure stating 'no evidence of DRC or adjoining country origin[23]." Other qualifying statements that can be used include: "to the best of our knowledge" or "we are not aware that any conflict minerals originate in DRC regions". For those reporters who are unable to conclude whether conflict minerals exist in their products, they should be allowed to state that their products "may or may not be DRC conflict free[24]". The effect of using such qualifying statements or other analogous safe harbors would be to absolve the reporter from all liability except for intentional fraud.

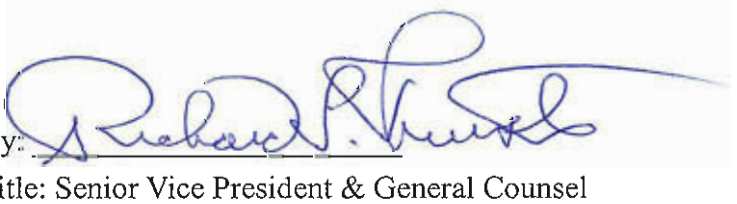
- Delayed implementation date requested for FPI.

As is customary when proposing major rules, it is within the Commission's authority to grant a delayed implementation date for FPI (as was done for SOX requirements). As the Proposed Rules require fundamental shifts in certain FPI practices, we respectfully request that implementation be delayed for FPI.

In light of the Deferential Standard and *Morrison* canon of statutory construction, we respectfully ask that the Commission exempt FPI from the Proposed Rules in their entirety because Section 1502 does not expressly state it applies to FPI. Alternatively, we kindly ask that the Commission revise the Proposed Rules in light of the above reasons.

Sincerely,

On behalf of Taiwan Semiconductor Manufacturing Company Ltd.



By: _____
Title: Senior Vice President & General Counsel
Date: 27 January 2011

[23] Jewelers Vigilance Committee comment letter cited in Proposed Rules at p.35, footnote 88.
[24] The Proposed Rules requires reporters who are unable to make such determinations to state that their products are from the DRC region.