January 31, 2012
Generic SEC comment file

Dear Generic SEC comment file,

I'm writing you with deep disappointment and concern. I understand that the final rule for Section 1502 (conflict minerals) has been delayed once again and is yet to be released. I'm calling on you to release a strong, final rule as soon as possible that gives life to the intent behind the statute by ensuring the following:

• Reject any delays or phased-in implementation. Given the urgency of the humanitarian situation in eastern Congo and the key role of the minerals trade in fueling violent conflict and human rights abuses, companies should not be granted delays to fully implement the reporting required by the law. Delays in implementation will seriously undermine the aim of the provision to reduce violence on the ground as quickly as possible and will send the wrong message to armed commanders in Congo and companies about the importance of this provision. With firm deadlines, companies and governments will be ready in time for the legislation, but those traders and governments unwilling to act on this issue will always seek delays.
• Adopt OECD Due diligence standard. Companies will benefit from additional guidance with respect to the due diligence standard required by section 1502. The SEC should build on the work carried out by the OECD and the UN Security Council by adopting the five-step due diligence framework set out in the OECD's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas. The OECD guidance was developed in coordination with a broad range of companies, NGOs, processing facilities, and regional governments and represents an international consensus approach to the trade in conflict minerals.
• Equal reporting standards for all conflict minerals. Tin, tungsten, tantalum and gold were defined as conflict minerals in section 1502 specifically because their trade is fuelling conflict and human rights abuses in eastern Congo. Different reporting standards would lessen the desired impact of the law on the humanitarian situation in Congo, create an uneven playing field for issuers and restrict access to information for consumers and investors.
• All companies, regardless of size, must be included. Smaller issuers are not harmed by inclusion in the rules. First, because these issuers are smaller, it stands to reason that they will have fewer products that contain conflict minerals, thus reducing the amount of products that must undergo a reasonable country of origin inquiry and supply chain due diligence. Second, the cost burden to perform due diligence is manageable, even for smaller entities.
• Terms should not be narrowly defined. Through Section 1502, Congress intended for all manufacturing companies which use minerals in their products, regardless of how small the percentage or what label they manufacture under to be required to trace and disclose information on their supply chains. This intention must be delivered on through comprehensive regulations.
• The reasonable country of origin standard should be defined. The primary objective of the legislation is to determine whether issuers are using conflict minerals from the DRC and surrounding countries. If

issuers do not know where their resources are coming from, they could be — intentionally, recklessly, or otherwise — supporting civil war and contributing to an emergency humanitarian situation. The reasonable country of origin inquiry standard should be one that requires a covered issuer to take sufficient steps to accurately determine and disclose whether its conflict minerals originate from DRC.
• Reports should be filed, not furnished. Congress has made clear that any reports or disclosures made under the statute are to be filed with the Commission. Paragraph (1)(A) of the statute requires any person described in paragraph (2) to disclose annually whether any of its necessary conflict minerals originated in the DRC and, if so, to "submit" a Conflict Minerals Report to the Commission. While some may attempt to seize upon the supposed uncertainty attendant in Congress' use of the word "submit" in this context, any such reliance is misplaced. Paragraph (2) plainly states that disclosure is required if conflict minerals are necessary to the functionality or production of a product manufactured by such person and "the person is required to file reports with the Commission pursuant to paragraph (1)(A)."
• No de minimis category. No de minimis threshold in the rules should be created based on the amount of conflict minerals used by issuers in a particular product or in their overall enterprise. In their October 4, 2010 letter, Senator Durbin and Congressman McDermott noted that Congress carefully considered including a de minimis rule but ultimately decided not to do so because "it would have created an overly generous loop-hole in the law."

Significant steps are being taken to ensure conflict minerals no longer line the pockets of armed groups in large part due to the passage of Section 1502, but the delay of the SEC rulemaking and the possibility of weak rules threaten this progress. It has been nearly a year and a half since President Obama signed the law - it is time to put this law to action.

Sincerely,

Teresa Wall