TANTALUM-NIOBIUM INTERNATIONAL STUDY CENTER

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Elizabeth M. Murphy, Secretary,
Securities and Exchange Commission,
100 F Street, NE,
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U.S.A.

(Submitted via email: rule-comments@sec.gov)

January 27th 2011

Subject: **File S7-40-10**
Section 1502 Dodd-Frank Wall Street Reform & Consumer Protection Act
Conflict Minerals

Dear Ms Murphy,

Please find attached comments from the Tantalum-Niobium International Study Center (T.I.C.) on the proposed rules pertaining Section 1502 - Conflict Minerals - within the above act.

The T.I.C. is an international trade association comprising around 85 members, all involved in the industries of tantalum and/or niobium, at various positions along the supply chain (mining, trading, processing, manufacturing, recycling, and for end-users such as electronics, steel, medical, aerospace, etc). While tantalum (columbotantalite) contributes less than five percent to the total export value of the four conflict minerals from the Democratic Republic of the Congo, we have nevertheless been very proactive on the issue of Conflict Minerals, working with various Organisations and Institutions to break the link between legitimate mining and the financing of illegal armed groups.

We wish the Securities and Exchange Commission every support in its endeavours. Seeking to balance the needs of a 'conflict free' supply chain and those of the tens of millions of Congolese citizens who rely on a legitimate mining industry for their only source of income is indeed a delicate task.

Yours sincerely,

Richard Burt
President

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COMMENTS ON CONFLICT MINERAL DRAFT REGULATION

General Comments

There is no doubt that the objectives of the underlying legislation and the draft regulations are praiseworthy and appropriate. Nonetheless, in promulgating such novel regulations, the Commission must take into account the following critical points.

To be an effective tool, the regulations should permit the public to draw distinctions between companies. If the regulations are so stringent that no company can meet the test, then all companies will be lumped together. Similarly, if there is no distinction between companies that are compliant with respect to key ingredients of their products but non-compliant for de minimis amounts of incidental materials, there is little incentive for companies to work toward DRC Conflict Free status.

The Commission should take into account the differences between minerals. For example, there are comparatively few tantalum processors and users. In contrast, the use of tin is ubiquitous among thousands of companies. Treating both in the same way in a 'one size fits all' approach is inappropriate.

The Commission should make sure that the burdens imposed on issuers do not place them at a competitive disadvantage relative to those not subject to the regulations.

The level and detail of the disclosure should not require disclosure of competitive information or disclosures that may create anti-competitive incentives or behavior.

Finally, the Commission should seek ways to avoid duplication of effort. Accordingly, disclosure documentation created at the smelter/processer level and verified by independent third party auditors certified according to SEC standards should be the foundation for downstream disclosure. Based on such verification, downstream companies and auditors must only verify traceability to such foundation documents. Such a process will minimize the inevitable cost and impact on issuers, particularly smaller issuers with limited resources.

Responses to Solicited Comments

1. Should our reporting standards, as proposed, apply to all conflict minerals equally?

There is no indication in the legislation or its history that certain minerals pose greater risks of supporting armed groups over other minerals. Rather than basing any

differential treatment on the mineral, there are two functional points that may be more productive.

First, some industries have already made substantial progress with respect to certain conflict minerals. Rather than imposing a 'one size fits all' audit requirement, it may be more appropriate to permit those industries that already are implementing a system to submit that system to the Commission for approval as an alternate approach to the third party audit system.

For example, the number of smelters of tantalum worldwide is relatively small. Under the EICC/GeSI approach, once a smelter has appropriately demonstrated that all of the raw material it processes is DRC conflict free, all users of that product should be able to rely on that smelter's certification. There is no reason - and no benefit - to have independent audits that retrace the same ground. Similarly, ITRI has proposed a detailed mechanism with respect to tin which may satisfy the objectives of the regulation. The same may not, however, be true for gold and other materials.

Second, the Commission should consider a de minimis exception when the end product derived from potentially conflict minerals, reflects less than a certain percentage of the value of the product – for example, 5% of the total manufacturing cost. As a practical matter, it becomes excessively burdensome and unlikely to lead to a productive outcome to impose the same burden on those whose products contain a significant amount of such elements and those whose use is relatively minor.

2. Should our rules, as proposed, apply to all issuers that file reports under Sections 13(a) and 15(d) of the Exchange Act? If not, to what issuers or other persons should our rules apply? Should we require an issuer that has a class of securities exempt from Exchange Act registration pursuant to Exchange Act Rule 12g3-2(b) to provide the disclosure and reporting requirements in its home country annual report or in a report on EDGAR? Would such an approach be consistent with the Act?

There is no question that compliance with this regulation will impose additional burden on all entities subject to its mandate. Accordingly, to ensure a level playing field, the application should be as broad and consistent as possible to avoid giving a competitive advantage to non-US entities. Further, in order to allow investors and other interested parties to make an 'apples to apples' comparison, there should be as little variation in language, format, and accessibility as possible.

3. Should we have an alternative interpretation of a 'person described'?

See response 2.

4. Should our rules apply to foreign private issuers, as proposed? Should we exempt such issuers and, if so, why and on what basis? Should the rules otherwise be adjusted in some fashion for foreign private issuers?

See response 2.

5. Would our proposed rules present undue costs to smaller reporting companies? If so, how could we mitigate those costs? Also, if our proposed rules present undue costs to smaller reporting companies, do the benefits of making their conflict minerals information publicly available justify these costs? Should our rules provide an exemption for smaller reporting companies? Alternatively, should our rules provide more limited disclosure and reporting obligations for smaller reporting companies? If so, what should these limited requirements entail? For example, should our rules require smaller reporting companies to disclose, if true, that conflict minerals are necessary to the functionality or production of their products but not require those issuers to disclose whether those conflict minerals originated in the DRC countries or to furnish a Conflict Minerals Report? Should our rules provide for a delayed implementation date for smaller reporting companies in order to provide them additional time to prepare for the requirement and the benefit of observing how larger companies comply?

There is no doubt that these regulations will impose burdens and costs on a variety of businesses. Nonetheless, there is no reason to infer that the burdens on smaller reporting companies will be disproportionately large. Accordingly, there is no principled reason to give special treatment to such companies. Further, to the extent that the SEC incorporates some of the modifications suggested herein, the burden on smaller companies would be decreased.

6. Should we require that all individuals and entities, regardless of whether they are reporting issuers, private companies, or individuals who manufacture products for which conflict minerals are necessary to the functionality or production of the products, provide the conflict minerals disclosure and, if necessary, a Conflict Minerals Report? If so, how would we oversee such a broad reporting system?

There is no question that regulation of reporting companies is well within the scope of the Commerce Clause. There is, however, substantial doubt that the Commerce Clause would be able to reach private companies and very little doubt that it could not reach individuals.

Turning to practicality, the ability of the Commission effectively to monitor and regulate the reporting obligations of the statute narrowly construed is unclear. Further, provided that the regulations apply to large and small issuers, they will form a critical mass which will, in practice, create sufficient commercial pressure on private companies and individuals who manufacture products involving potential conflict materials. Non-compliant companies will be unable to withstand the political and consumer pressures. Accordingly, there is no need for the SEC to seek to expand its jurisdiction.

7. Would requiring compliance with our proposed rules only by issuers filing reports under the Exchange Act unfairly burden those issuers and place them at a significant competitive disadvantage compared to companies that do not file reports with us? If so, how can we lessen that impact?

As noted above, there is no doubt that compliance will impose a substantial burden on those companies within the scope of the regulation.

In terms of lessening the competitive impact, however, there are several steps that the Commission can take. First, it can create a de minimis exception as discussed under response 1. Second, it should consider implementation of a procedure to evaluate and approve smelter industry or mineral specific mechanisms and certifications that users ('manufacturers') could rely on. Third, it should make every effort to ensure that standards for compliance are clear.

8. Omitted.

9. Should we define the term 'manufacture'? If so, how should we define the term?

There is no reason that the term 'manufacture' has any special usage in the context of this regulation.

10. Should our rules, as proposed, apply both to issuers that manufacture and issuers that contract to manufacture products in which conflict minerals are necessary to the functionality or production of those products?

It is unclear how the inclusion of the concept of 'contract to manufacture' promotes the objectives of the statute. If Entity A contracts with Entity B (not under the ownership or control of Entity A) to manufacture a product, there are only two possible scenarios. First, Entity A could, in essence, be a pure pass-through entity that does not modify the product at all. Second, Entity A could further modify the component manufactured by Entity B. In the former case, there is no meaningful distinction between Entity A and a retailer and there is no indication that Congress intended to include retailers in the scope of the statute. Otherwise, a large number of distribution, shipping, warehousing and other operations which engage in no meaningful manufacture and which have no reason to become familiar with the constituents of the products with which they deal will be subject to the law.

In the latter situation, the term becomes superfluous because Entity A will fall within the scope of the term 'manufacture'. Any additional language will be confusing.

There is also a latent ambiguity in the meaning of the term 'contract to manufacture' discussed below in the specific comments to the regulations.

The smelter certification process previously discussed would allow the user of the material, either as an Original Equipment Manufacturer or as a Subcontractor Manufacturer, to rely on material supplier certifications.

11. – 15. Omitted.

16. Should our rules define the phrase 'necessary to the functionality or production of a product', or is that phrase sufficiently clear without a definition? If our rules should define the phrase, how should it be defined?

This is not a phrase that has a common usage and a definition would be of some assistance to issuers. The following is a proposed definition:

> A material is necessary to the functionality of a product if the inclusion or application of such material to the product is required for it either (i) to function on its own, or (ii) to function when it is incorporated or integrated with other products. A material is necessary to the production of a product if the inclusion or application of such material is required for the production of the product even if such material is only a catalyst, intermediate material, or framework material that is not found in the final product.

17. If we were to define this phrase, should we delineate it to mean that a conflict mineral would be necessary to a product's functionality only if the conflict mineral is necessary to the product's basic function? If so, should we define the term 'basic function' and, if so, how should we define that term? Should we define the term to include components of a product if those components are necessary to the product's basic function such that a conflict mineral would be considered necessary to the functionality of a product if the conflict mineral is necessary to the functionality of any of the product's components that are required for that product's basic function? For example, if the only conflict minerals in an automobile are contained in the automobile's radio, should our proposed rules consider those conflict minerals necessary to the automobile's functionality even if the automobile's basic function is for transportation? If that radio is marketed and sold with the automobile, should our proposed rules consider the conflict minerals that are isolated in the radio necessary to the functionality of the automobile? Alternatively, should such a definition consider only conflict minerals isolated in an automobile component required specifically for the automobile's basic function as necessary for the functionality of the automobile?

The distinction between a 'basic function' and an ancillary function is murky and undefinable. For example, if a manufacturer produced a radio coated in gold, the gold would not relate to its function as a radio, but would relate to its function as an objet d'art. Surely with such a product, there would be no less reason to ascertain whether the gold was a conflict mineral. Similarly, with respect to multi-function products such as computers, it would be difficult to draw any line between those aspects that are basic and those that are not. Inclusion of such a concept in the regulations would create substantial and unnecessary complexity and would be inconsistent with the statutory goals.

The specific example demonstrates this problem. Few, if any, cars are sold without a radio, suggesting that consumers view the radio as basic to an automobile even if it is not necessary to the use of the product for transportation. On the other hand, a rear-view camera is an option that is currently found on comparatively few automobiles, but it does directly impact the parking operation. Similarly, some, but not all, cars contain telemetry devices that permit remote monitoring of the functioning of the automobile. In principle, there is no meaningful distinction between the gauges located on the dash for the driver and those for such remote monitoring, but whether such telemetry systems are basic becomes an arbitrary determination.

18. If we were to define the phrase 'necessary to the functionality', should we delineate it to mean that a conflict mineral would be necessary to a product's functionality if the conflict mineral is included in a product for any reason because that conflict mineral would be contributing to the product's economic utility? Does the fact that, if a conflict mineral is not 'necessary' it, axiomatically, could be excluded from the product or the manufacturing process support such a broad reading?

The concept of a product's economic utility would not assist in helping to define the notion of 'necessary to the functionality'. In the automobile example, the radio clearly has economic utility because manufacturers charge different amounts for different types of radios. On the other hand, customers are often entirely unaware of the fuses or circuit-breakers necessary to the operation of the automobile and would be unlikely to separately pay for such, but that does not mean that they are not necessary to the functionality of the automobile.

See also response 17.

19. – 20. Omitted.

21. Should we delineate the phrase 'necessary to the production' so that our rules would not consider conflict minerals occurring naturally in a product or conflict minerals that are purely an unintentional byproduct of the product as necessary to the production of that product?

It is unclear what situation is contemplated by this question. By definition, the relevant elements are those that can be derived from the raw minerals specified in the statute. Those elements are 'naturally occurring' in the minerals; the minerals are not 'naturally occurring' in the elements. That means that after the smelting process, only the elements will be of concern; not the minerals in which they occur. There will never be the 'minerals' as such that would naturally occur in a product. Similarly, any element that comes out of a production process must have existed in the input materials or the machinery making the product. If in the input materials, then acquisition and inclusion was intentional. If from the machinery, then the element would be excluded because the Commission is proposing to exclude tooling (including cutting tools) from the scope of the regulation.

See also response 17.

22. – 25. Omitted.

26. Should issuers with necessary conflict minerals that did not originate in the DRC countries be required to disclose any information other than as proposed? For example, should we require such an issuer to disclose the countries from which its conflict minerals originated?

One of the matters the SEC should take into account is the potential anti-competitive effect of certain disclosures. At present, availability of sources of supply, potential new sources, and the like are of significant competitive value. From a market perspective, each company should be identifying and negotiating with suppliers entirely

independently of its competitors. The more detailed the disclosure that is mandated, the more likely that such activities will become interdependent and more subject to implicit coordination. Accordingly, requiring issuers to specifically identify country of origin may inherently identify the specific source of an input material. When an issuer can certify that the materials are DRC conflict free, then the balance of disclosure versus potential anticompetitive effect balances in favor of less specific disclosure.

27. Omitted.

28. Should we require, as proposed, that an issuer maintain reviewable business records if it determines that its conflict minerals did not originate in the DRC countries? Are there other means of verifying an issuer's determination that its minerals did not originate in the DRC countries? Should we specify for how long issuers would be required to maintain these records? For example, should we require issuers to maintain records for one year, five years, 10 years, or another period of time?

It is unclear what is meant by 'reviewable business records'. Does that require the issuer to maintain only its own business records, or does that include records it obtains from other parties? Further, as noted in the specific comments, the meaning of the word 'reviewable' in this context is unclear. Instead, the Commission should consider modifying this concept to 'the documentation underlying the issuer's reporting' or 'the documents considered by the independent third-party auditor'. Either of these will constitute a much clearer and better defined scope for the records that are useful and relevant to determine the quality of the issuer's disclosure. We suggest a two year record retention period, if one is specified.

An additional ambiguity is further discussed in the specific comments section.

29. – 32. Omitted.

33. Is a reasonable country of origin inquiry standard an appropriate standard for determining whether an issuer's conflict minerals originated in the DRC countries for purposes of our rules implementing the Conflict Minerals Provision? If not, what other standard would be appropriate? Rather than requiring a reasonable country of origin inquiry as proposed, should our rules mandate that the standard for making the supply chain determinations, as set forth in Exchange Act Sections 13(p)(1)(A)(i) and (ii) (and described below), also applies to the determination as to whether an issuer's conflict minerals originated in the DRC countries? Should we provide additional guidance about what would constitute a reasonable country of origin inquiry in determining whether conflict minerals originated in the DRC countries?

The harder it is for a company to meet the standard for inquiry, the more likely it is that the company will be obliged to say that it cannot confirm that its products are DRC conflict materials free. Thus, there will, in effect, be less distinction between companies and, therefore, less information available to the public. In the extreme case, other than companies that affirmatively know they use DRC conflict materials, all other

companies will be obliged to put themselves in the 'cannot determine' category. Clearly, this is not the intent of the statute.

This problem is exacerbated by the relatively Draconian penalties and consequences for inadequate disclosures. Particularly in a situation where the Commission, issuers, and their counsel have so little experience, the Commission must assume that issuers will be extremely cautious in any affirmative assertion of source.

In that context, the Commission should assist issuers by providing bright line definitions of inquiry standards for disclosure purposes. That would allow companies to be certain that if they accomplished certain steps in good faith, an unintentional erroneous disclosure detected after filing would not lead to catastrophic consequences or litigation for the company or its executives and employees. This is particularly true in an area in which there are no well-established standards of reasonability and new procedures and techniques are being developed frequently.

34. Should we not require any type of inquiry? For example, would it be appropriate and consistent with the Conflict Minerals Provision to permit an issuer to make no inquiry, so long as it disclosed that fact?

There were several approaches that Congress could have taken with respect to the issue of conflict minerals. By locating responsibility with the Commission, Congress indicated that the emphasis should be on disclosure. Full disclosure will allow the public to make such judgments as it will about the conduct of a business and its use, non-use, or lack of concern about conflict minerals. Further, disclosure is a tool with which the Commission is familiar.

In that context, it is preferable for the Commission to focus on disclosure rather than some type of mandated process or procedure. Full disclosure will permit investors and the public to make informed decisions without involving the Commission in an activity - the prescription of inquiry procedures for different materials - for which it was not designed.

In sum, a regime of full disclosure of what an issuer does or does not do will satisfy the statutory requirements, meet the objectives of the legislation, and minimize burden on the Commission and issuers.

35. Should issuers be able to rely on reasonably reliable representations from their processing facilities, either directly or indirectly through their suppliers, to satisfy the reasonable country of origin inquiry standard? If so, should we provide additional guidance regarding what would constitute reasonably reliable representations and what type of guidance should we provide? If not, what would be a more appropriate requirement?

The entities with the best ability to determine country of origin of raw minerals are the processing facilities. Once the mineral is transformed, any manufacturer's due diligence will largely focus on tracing materials back to a processor and then making inquiry of that processor about its purchasing practices. For every level of production past the processor to make essentially the same country of origin inquiry is not only an extensive duplication of effort, but it will be an extraordinary burden on the processors.

Assuming a processor undertakes a sufficiently rigorous procedure, then its certificate can accompany its subsequent sales. Provided that the next level of user can satisfy itself that all of its inputs of potential conflict materials come from such processors, it can put together a package that can be transmitted with its products to its own customers. Therefore, no independent auditing involvement is necessary beyond the material processor.

Under such a scenario, the package that would go from the processor to its customer would include, for example, the certificate from an independent auditor that confirms that the processor has demonstrated that its ores are DRC conflict free. At the next level, the independent auditor would confirm that all inputs at that level came from processors who had the appropriate certificates. In turn, the customers at the next level would go through the same process. This would ensure that there is an independent verification at each level, but would avoid the requirement that each third party auditor proceed through the entire supply chain.

36. Should any qualifying or explanatory language be allowed in addition to or instead of the reasonable country of origin inquiry standard, as proposed, regarding whether issuers' conflict minerals originated in the DRC countries? For example, should issuers be able to state that none of their conflict minerals originated in the DRC countries 'to the best of their knowledge' or that 'they are not aware' that any conflict minerals originated in the DRC countries?

See response 33.

37.-38. Omitted.

39. Should our rules, as proposed, require issuers to disclose the facilities, countries of origin, and efforts to find the mine or location of origin only for its conflict mineral that do not qualify as DRC conflict free, and not for all of its conflict minerals? Alternatively, should we require issuers to disclose the facilities, countries of origin and efforts to find the mine or location of origin for all of its conflict minerals regardless of whether those conflict minerals do not qualify as DRC conflict free?

See response 26.

40. Should our rules require issuers to disclose the mine or location of origin of their conflict minerals with the greatest possible specificity in addition to requiring issuers, as proposed, to describe the efforts to determine the mine or location of origin with the greatest possible specificity? If so, how should we prescribe how the location is described?

See response 26.

41. Omitted.

42. We are proposing that an issuer 'certify the audit' by certifying that it obtained such an audit. Should we further specify the nature of the certification?

We are not proposing that anyone sign this certification. Should our rules require issuers to have the audit's certification signed? If so, who should be required to sign the certification? Also, if we revise our proposal to require an individual to sign, should the individual who signs the certification sign it in his or her capacity within the company or on behalf of the company? What liability should our rules assign to the individual who signs the certification?

There is no reason for certification, particularly in light of the current approach to have the audit 'submitted'. Once a company has adequately described its procedures, then certification only creates additional complexity and uncertainty. Unlike certifications under the Sarbanes-Oxley Act which address a company's own internal procedures, much of the due diligence process will rely on information provided by third parties. It is unclear how and why any individual could be sufficiently confident of the reliability of such outside information as to sign a certification. We recommend that an issuer disclose the results of its reasonable country of origin inquiry. No certification is necessary. As a practical matter, a certification requirement would preclude any company from ever asserting that its products are DRC conflict free.

43. – 49. Omitted.

50. Should our rules, as proposed, require an issuer to use due diligence in its supply chain determinations and the other information required in a Conflict Minerals Report? If so, should those rules prescribe the type of due diligence required and, if so, what due diligence measures should our rules prescribe? Alternatively, should we require only that persons describe whatever due diligence they used, if any, in making their supply chain determinations and their other conclusions in their Conflict Minerals Report.

See response 34. If the Commission feels compelled to prescribe a process rather than mandating a disclosure regime, then it should be as detailed as possible to give issuers confidence that their procedures will meet the standard.

51. Omitted.

52. Should our rules state that an issuer is permitted to rely on the reasonable representations of its smelters or any other actor in the supply chain, provided there is a reasonable basis to believe the representations of the smelters or other parties?

See response 35.

53. Omitted.

54. Should our rules prescribe any particular due diligence standards or guidance?

See response 34.

55. Should our rules require that an issuer use specific national or international due diligence standards or guidance, such as standards developed by the OECD, the United Nations Group of Experts for the DRC, or another such organization? If so, should our rules require the issuer to disclose which due diligence standard or guidance it used? Should we list acceptable national or international organizations that have developed due diligence standards or guidance on which an issuer may rely? Should our rules permit issuers to rely on standards from federal agencies if any such agencies develop applicable rules?

See response 34. If the Commission feels compelled to prescribe a process rather than mandating a disclosure regime, then it should be as detailed as possible to give issuers confidence that their procedures will meet the standard. Any reference should be to well-detailed and explained approaches.

56. – 60. Omitted.

61. We note it is possible issuers may have stockpiles of existing conflict minerals that they previously obtained. Do we adequately address issuers' disclosure and reporting obligations regarding their existing stockpiles of conflict minerals? If not, how can we address existing stockpiles of conflict minerals? Should our rules permit a transition period so that issuers would not have to provide any conflict minerals disclosure or report regarding any conflict mineral extracted before the date on which our rules are adopted? Alternatively, would the reasonable country of origin inquiry standard for determining the origin of the conflict minerals and the due diligence standard or guidance for determining the source and chain of custody of the conflict minerals that originated in the DRC countries accomplish the same goal? For example, should issuers be required to inquire about the origin of their conflict minerals extracted before the date on which our rules are adopted? As another example, should issuers file a Conflict Minerals Report regarding conflict minerals that originated in the DRC countries before the date on which our rules are adopted?

A transition period is both necessary and appropriate. Even for those issuers who have been careful not to buy conflict minerals in the past few years and can document that the material is DRC Conflict Free, they may not be able to document that the material did not come from an adjoining country since that requirement has only arisen recently. In the absence of such a transition period, companies that have made good faith efforts will be lumped in with companies that have made no efforts at all. This is unfair to the former and makes the disclosure much less useful to the public.

The disclosure requirement should encompass materials purchased in the year covered by the annual report together with a summary of the disclosure (if any) from the prior year.

62. Should there be a de minimis threshold in our rules based on the amount of conflict minerals used by issuers in a particular product or in their overall enterprise? If so, what would be a proper threshold amount? Would this be consistent with the Conflict Minerals Provision?

See response 2.

63. – 69. Omitted.

Regulation-Specific Comments

Section (a) requires disclosure from the issuer 'whether any of these conflict minerals originated in the Democratic Republic of the Congo or an adjoining country ... or that the registrant is not able to determine that its conflict minerals did not originate in the Democratic Republic of the Congo or an adjoining country'. In the next sentence, similar language is used. In the definitions section, however, rather than defining origination, subsection (c)(4) defines the term 'DRC Conflict Free'. In order to avoid ambiguity and clarify the focus of the proposed regulations, that defined term should be incorporated into section (a). This phrase would then read 'whether these conflict minerals are DRC Conflict Free ... or that the registrant is not able to determine that its conflict minerals are DRC Conflict Free'. This will also avoid flipping back and forth between referring to origination in the DRC and referring to non-origination in the DRC as the current regulations appear to do.

Recommendation: Incorporate the definition of DRC Conflict Free in sections (a) and (b) of the proposed regulations.

Section (a) uses the phrase 'necessary to the functionality or production of a product'. In the explanation of the regulations, the SEC indicates that it intends to limit the scope of application of this phrase to exclude the machines and tools employed in the manufacture process. The draft regulation, however, does not itself contain such a limitation. This creates unnecessary ambiguity.

Recommendation: Define the phrase 'necessary to the functionality or production of a product'.

Section (a) uses the phrase 'or contracted to be manufactured by the registrant in the year covered by the annual report'. This suggests that even if no manufacture takes place during the relevant year, there is a reporting obligation of a contract comes into existence in that year that provides for such manufacture in later years. In the context of certification concerning the source of minerals, however, a party can only make affirmative statements about minerals that have already been purchased. There is simply no meaningful way that a party can certify in year 1 what the source of minerals **will be** in year 2. Nor is there any way a third party can audit events that have not yet occurred.

Recommendation: Delete the phrase 'or contracted to be manufactured by the registrant in the year covered by the annual report'.

Section (a) uses the phrase 'reasonable country of origin inquiry'. This is a central concept to this entire set of regulations. There is no definition, either with specific components or generic qualifications of such reasonable inquiry. Reference to section (b) will be of no use because that section is only triggered if, after reasonable inquiry, an issuer cannot determine the country of origin of the relevant minerals.

Recommendation: Define the scope of a reasonable inquiry.

Section (a), in describing the disclosure that must be made if an issuer can affirm that its products are DRC Conflict Free, requires disclosure of 'the reasonable country of origin inquiry it undertook to make its determination'. The regulation, however, does not make clear precisely what is to be disclosed. Among the possibilities are (i) a simple affirmation that the entity did engage in a reasonable country of origin inquiry, (ii) a description of the nature of the inquiry without more, (iii) a detailed summary of the inquiry, or (iv) all the documentation supporting the inquiry. In light of the goals and objectives of the disclosure, it appears that the most appropriate explanation is a description of the nature of the inquiry. This will allow readers to evaluate the nature and extent of the inquiry without excessive detail or the need to disclose trade confidential information.

Recommendation: Amend the section to require disclosure of 'a description of the nature of the inquiry'.

Section (a) provides that 'the registrant must maintain reviewable business records to support any such negative determination' with respect to the reasonable inquiry identified earlier in the section. Since any record that exists is capable of being reviewed, presumably the SEC has more in mind than establishing that the records must be kept in a reviewable format. Accordingly, the inference is that the documents must not only exist, but they can be reviewed by someone. The regulations do not define who, when, and under what circumstances such review takes place. To the extent that the purpose is to ensure that records exist if the SEC determines to conduct an investigation of the nature and quality of the disclosure, it should be clear that the records will only be reviewed upon issuance of an appropriate administrative subpoena by the Commission. Any broader review would call into question trade secrets.

Recommendations: Either delete or clarify the circumstances of such review.

One of the conditions in subsection (b) that triggers the obligation for filing the detailed information is 'if such conflict minerals came from recycled or scrap'. Subsection (c)(4) states that 'Conflict minerals that a registrant obtains from recycled or scrap sources are considered DRC conflict free'. By definition, conflict minerals cannot come from recycled or scrap sources because they are categorically excluded from the scope of the definition of conflict minerals.

Recommendation: This third conditional trigger should be deleted.

Subsection (b)(1)(i) includes in the activities to be reported the registrant's efforts 'to exercise due diligence in determining that the conflict minerals came from recycled or scrap sources'. As noted above, however, subsection (c)(4) defines that recycled or scrap materials can never be conflict minerals. Thus, this requirement makes no sense since no effort is necessary to confirm that something categorically excluded from the scope of conflict minerals is excluded from the scope of conflict minerals.

Recommendation: Delete this phrase.

Subsection (b)(1)(ii) requires that a registrant arrange for 'a certified independent private sector audit of the Conflict Minerals Report' it files. This requirement suffers from several fatal flaws. First, it assumes that such an audit is required, where inquiry may be sufficient. Second, it assumes that such an audit will be available. There is no assurance that this service will be available to satisfy the enormous demand for such audits. If a registrant cannot obtain such an audit, then it is in an impossible position, it

cannot certify to the correctness of something that it did not do. Third, the timing anticipated by the regulation is impossible. Until the year for which the report is issued is complete, then the Conflict Minerals Report cannot be completed. Even assuming that this report is completed in the first month after the close of the registrant's fiscal year, there is no assurance that an independent audit can be completed in time for the required filing.

Recommendation: Either this requirement should be deleted or such audit, if needed, should be required not for the year just completed but for the prior year. This will allow sufficient time to complete a meaningful audit and still accomplish the goals of the underlying statute.

Subsection (b)(1)(ii) requires '[a] certification by the registrant that it obtained such an independent private sector audit'. Subsection (b)(1)(iv) requires the attachment of the report itself to the filing. There is no reason to certify to the existence of a report that is presented in full in the filing itself.

Recommendation: This requirement should be deleted.

Subsection (b)(1)(iii) requires disclosure, inter alia, of 'the facilities used to process those conflict minerals, the country of origin of those conflict minerals...'. This raises significant competitive issues. If too many details are disclosed, then information that has significant competitive value will be disclosed. This may create significant disincentives for any one supplier to seek to expand market share when this information will become readily available to its competitors.

Recommendation: Clarify that these disclosures are generic rather than specific.

In defining the term 'Armed Group', subsection (c)(2) incorporates by reference 'the most recently issued annual Country Reports on Human Rights Practices under sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b)) relating to the Democratic Republic of the Congo or an adjoining country for the year the annual report is due'. This definition contains a latent ambiguity. It may be the general case that the Country Reports will be issued on a timely basis. Nonetheless, unless they are issued on January 1 of the year in question, 'the most recently issued' annual report will not necessarily be the report 'for the year the annual report is due'. For example, if a report has been issued in 2012 and another one is due in 2014 but has not yet been issued, the reporting entity will not know whether it should (i) still rely on the 2012 report as the most recently issued report, (ii) seek extension because it cannot comply with this regulation, or (iii) interpret the definition as fundamentally failing and therefore determine that no report is necessary.

Recommendation: Delete the phrase 'for the year the annual report is due'. This will clarify that the relevant report is the existing report for the current year. Further, if the conflict status changes during the year, then material up to the date of change should be acceptable.

Subsection (c)(4) contains a definition of 'conflict minerals'. It is important to note for clarity's sake that it is not the case that all supplies of the listed minerals derive from conflict areas. Indeed, the vast bulk of such resources do not come from conflict areas. Thus, the term 'conflict minerals' as a generic term for such minerals is incorrect and inappropriate. Since the key issue is whether such minerals do or do not come from conflict areas, the better and more accurate term would be 'potential conflict minerals'.

Recommendation: Change the defined term from ‘conflict minerals’ to ‘potential conflict minerals’ and make coordinate changes in other portions of the proposed regulations.

End of Comments