

Stephen Jacobs

Senior Director

International Economic Affairs

February 10, 2012

The Honorable Mary L. Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Cost Estimates for Section 1502 of the Dodd-Frank Act (Conflict Minerals)

Dear Chairman Shapiro:

I am writing in response to the January 17, 2012 and other submissions made by an environmental consulting company, Claigan Environmental of Ontario, Canada, concerning the expected costs of implementation of the “Conflict Minerals” rule pursuant to section 1502 of the Dodd-Frank Act. The National Association of Manufacturers’ (NAM) member companies with experience in many different markets believe the Claigan submission is misleading on several levels. Since it suggests that the cost estimates provided by the NAM and Tulane University “should be disregarded,” we offer our views on some of those criticisms.

To support its assertions, Claigan cites eight conflict minerals policy statements issued by leading electronics or information technology firms. Claigan extrapolates from those limited statements to conclude the “vast majority” of reporting issuers are following the Electronics Industry Citizenship Coalition/Global e-Sustainability Initiative (EICC/GeSI) process. That is simply not correct, as the vast majority of NAM members are awaiting the final SEC regulation before developing full compliance programs – as one would expect when the SEC requirements remain unknown. NAM members have pointed out that:

1. The EICC/GeSI format was designed by and for *electronic industry* supply chains. While we admire and appreciate the leadership shown by EICC/GeSI, electronics industry supply chains – as opposed to other industries - generally have fewer suppliers and tiers.

Electronic industry product lines also tend to be more focused, making it somewhat easier to identify relevant suppliers and ultimately product origin. The same cannot be said of other industrial and consumer markets, many of which have complex supply chains with more suppliers and numerous tiers. Many NAM members have parts numbers that are counted in the *millions*. The EICC/GeSI approach can be cumbersome and difficult to apply outside relatively concentrated electronic industry supply chains.

For that reason firms in other sectors have not yet endorsed the EICC/GeSI protocol and process. In some cases, those firms require different industry-specific supply chain verification. Accordingly some NAM member firms will follow the EICC/GeSI protocol for their electronics industry customers but will be developing different protocols for other sectors based on the unique conditions of those supply chains.

2. The EICC/GeSI conflict-free smelter certification program is still very much a work in progress. Only 11 tantalum smelters are listed in the EICC database; no other conflict minerals smelters have been certified as conflict-free to our knowledge.
3. Further, the NAM estimate was driven by information provided by its membership and therefore does indeed reflect "actual processes implemented by companies" from industries as varied as aircraft, machine tools, and chemicals. Conflict mineral due diligence costs incurred by some member firms are already substantial, even prior to full implementation of a due diligence program that takes into account the final SEC rule once issued. One NAM member firm reported it faces a significant IT investment for supplier communication and record keeping and annual due diligence costs in over 40 business units and 65 countries.
4. The argument that the Tulane Study does not mention "country of origin" is circular. What constitutes a "reasonable country of origin" inquiry is central to the underlying cost/benefit analysis. The Tulane Study pointed out that previous SEC and NGO cost estimates failed to consider the expensive steps many firms – especially those outside the electronics industry – face in trying to satisfy such a standard. Moreover, Claigan does not address costs that may occur if the SEC does not provide an exception for trace levels of these minerals – or at least an intentionally added standard – in the final rule. The cost of tracking and reporting trace levels of these minerals for many thousands of products could be considerable.
5. NAM believes Claigan is understating the compliance cost burden for small businesses in reporting issuer supply chains. Claigan states it has quoted small business compliance cost programs "at ~ 3% of the cost...they have publicly reported". That raises several questions: (a) Are those firms exclusively or primarily in the electronics industry with its more focused supply chains? (b) Is this based on a representative sampling of all small businesses potentially affected by the rule? (c) How could these quotes meet all compliance requirements in the absence of a final SEC rule? Where supply chains include millions of parts and numerous supply tiers, small businesses in tiers closer to the finished product will incur considerable cost tracking the origin of 3T or gold used in their components through numerous upstream tiers. As the Small Business Administration Office of Advocacy noted in its October 25, 2011 letter to the SEC, "*Because the SEC does not take into account the complexity of supply chains and the number of small businesses that are part of those supply chains, the SEC has underestimated the number of small businesses that would be impacted by the proposed rule.*"
6. Claigan's seven-step process is unrealistic for many manufacturers, especially large manufacturers with complex supply chains. The seven-step process overlooks a number of issues and necessary tasks, and consequently Claigan's quotes are unrealistically low (at least for larger manufacturers). An Excel spreadsheet (such as the EICC-GeSI Conflict Free Reporting Template) to collect information for a supply chain with millions of part numbers is unrealistic. Nor has the spreadsheet offered by EICC-GeSI been proved or validated for conflict minerals data collection in other than the electronics industry.

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7. No standard audit protocol is currently available for validating supplier information in terms of conflict minerals (this internal "audit" appears to be required under the OECD Guidelines, which are not even mentioned in Claigan's process). It is unrealistic to believe that corporate officers would provide the SEC with a report based merely on suppliers information derived from a software template like the EICC/GeSI template.
8. Employee training costs, outside legal counsel, and contract modification also seem not to have been considered by Claigan. Elsewhere, Claigan states, "[T]he legal notices that go out in year one will not need to be sent in successive years," but fails to account for the frequent changes in suppliers and product composition that many companies implement to remain competitive. Supplier contracts do not all begin and end at once, and may extend for three to five years or more.

Thank you for the opportunity to provide these additional views.

Sincerely,

A handwritten signature in black ink, reading "Stephen P. Jacobs". The signature is written in a cursive, flowing style with a large initial 'S'.

Stephen P. Jacobs