MEMORANDUM

February 15, 2012

To: File No. S7-40-10

From: Scott H. Kimpel
Office of Commissioner Troy A. Paredes

Re: Conflict Minerals

On February 15, 2012, Commissioner Daniel M. Gallagher, Stephen W. DeVine, Counsel to Commissioner Gallagher, and Scott H. Kimpel, Counsel to Commissioner Troy A. Paredes, met with the following persons: Patricia Jurewicz, Director, Responsible Sourcing Network, a project of As You Sow; Bennett Freeman, Senior Vice President, Social Research and Policy, Calvert Asset Management Co.; Sandy Merber, Counsel, International Trade Regulation and Sourcing, General Electric Company; Jacques Bahati, Policy Analyst, Africa Faith and Justice Network; Alya Kayal, Director of Policy and Programs, US SIF; Karen Stauss, Director of Programs, Free the Slaves; Jay A. Celorie, Global Program Manager, Hewlett Packard; Pat Zerega, Director of Shareholder Advocacy, Mercy Investment Services; and Susan Baker, Shareholder Advocate, Trillium Asset Management.

The participants discussed the Commission's proposed rules concerning conflict minerals. In advance of the meeting, Ms. Jurewicz circulated the attached document.

Attachment

Multi-Stakeholder Group on 1502, Conflict Minerals
Overview of submitted key points for SEC meetings with commissioners and staff
Feb/15/2012

Comments from the Multi-stakeholder letter submitted to the SEC November 17, 2010

- It is critical to develop mechanisms to enforce supply chain transparency by companies that use conflict minerals for the functionality of their products
    - A conflict mineral is considered **necessary to the functionality or production of a product when:**
        - a. The conflict mineral is intentionally added to the product; or
        - b. The conflict mineral is used by the Person for the production of a product and such mineral is purchased in mineral form by the Person and used by the Person in the production of the final product but does not appear in the final product; and
        - c. The conflict mineral is essential to the product's use or purpose; or
        - d. The conflict mineral is required for the marketability of the product

- We support the premise that if the regulated Person uses conflict minerals that originated from the DRC, **then they must provide a "description of the measures taken to exercise due diligence."** (See answer to #50 below from Mar 2 letter for details)

Comments from the MSG letter submitted March 2, 2011

20. When conflict minerals are present in tooling and production machinery used to produce a product, they should **not** be considered to be 'necessary to production'

28. The final rule should require an issuer to maintain reviewable business records – maintained for 5 years

33. The "reasonable country of origin inquiry standard" is appropriate. Additionally, reasonable country of origin inquiry **could include instances where issuers rely on an industry wide process** that deems smelters "conflict free" provided this industry-wide process is comparable to the OECD Due Diligence Guidance

35. Issuers should be able to rely on reasonable representation from their suppliers. **"A supplier declaration approach"** is preferable in place of a product-based or materials declarations approach

36. Issuers' **disclosures under the regulations should be sufficiently complete to allow investors to clearly understand the basis on which the issuer has determined the origin of conflict minerals,** regardless of how the declaration is characterized. If they state that no conflict minerals originated in the DRC or adjoining countries, the due diligence process has to clearly define and demonstrate what led them to this statement.

Labeling - The rule should make clear that issuers are not required by anything in the statute or the rule to physically label their products in any way with regard to the presence or absence of conflict minerals. Request that the Commission (1) clarify in its rule that products may not be labeled "DRC conflict free" if the minerals were sourced from outside of the DRC or adjoining countries, (2) reserve "DRC conflict free" labels for companies sourcing from the region, (3) recognize that the FTC has enforcement jurisdiction over DRC conflict free labeling claims, and (4) make substantiation a requirement if products are labeled "DRC conflict free".

39. The MSG recommends that the country of origin, names of facilities, and information to identify mine or location of origin of ores with greatest specificity should be disclosed for all conflict minerals that originate in the DRC or adjoining countries, and directly correlate disclosed locations with the U.S. government map.

50. **The rule should provide guidance to issuers of steps that presumptively would constitute a reliable due diligence process.** We recommend the types of information delineated below are disclosed to the SEC. Please note that the elements listed below align with the recently approved OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Guidance, Annex I, p. 10).

Whether independently or through an industry wide process, a due diligence process for minerals sourced in the DRC and/or adjoining countries containing the following elements and demonstrating good faith and a reasonable standard of care, should be presumed to be reliable if the issuer's disclosure includes:

a. A conflict minerals policy;
b. A supply chain risk assessment procedure that includes "upstream" and "downstream" due diligence, which includes a description of efforts made and the result of efforts to obtain information outlined in [its upstream and downstream due diligence process] (which includes everything (in points a and b) below);
c. A description of the policies and procedures to remediate instances of non-conformance with the policy;
d. An independent third party audit of the Person's due diligence report, which includes a review of the management systems and processes; and
e. The results of the independent 3rd party smelter audit detailing items (b)i-x [see below]; or the inclusion of a link to the published smelter audit reports made available via the Person's website or publicly available website detailing items (b)i–x [see below]; with due regard taken of [designated] business confidentiality and other competitiveness concerns. [1]

Per the "Reporting" section of the investor letter submitted on November 16th, 2010[2], when it is determined that tin, tungsten, tantalum and/or gold mineral ore originates in the DRC and/or adjoining countries, the third party audit, made available via a publicly available website and which issuers must disclose in their conflict minerals report, should additionally include:

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[1] Business confidentiality and other competitive concerns means price information and supplier relationships subject to evolving interpretation.
[2] See: http://sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-54.htm

a. Smelter auditing protocol performed by an independent 3rd party.
b. When it is determined that incoming minerals originate from DRC or neighboring countries, the 3rd party audit in (a) would additionally include the following information (which is aligned with the OECD Guidance, p. 22, 26 & 37):

i. an on-the-ground risk assessment that addresses the points outlined in the OECD's Guidance Step 2 and Appendix;
ii. all taxes, fees or royalties paid to government for the purposes of extraction, trade, transport and export of minerals;
iii. any other payments made to governmental officials for the purposes of extraction, trade, transport and export of minerals;
iv. all taxes and any other payments made to public or private security forces or other armed groups at all points in the supply chain from extraction onwards;
v. the ownership (including beneficial ownership) and corporate structure of the exporter, including the names of corporate officers and directors; the business, government, political or military affiliations of the company and officers.
vi. the mine of mineral origin;
vii. quantity, dates and method of extraction (artisanal and small-scale or large-scale mining);
viii. locations where minerals are consolidated, traded, processed or upgraded;
ix. the identification of all upstream intermediaries, consolidators or other actors in the upstream supply chain;
x. transportation routes.

54. We **recommend the rules make reference to specific due diligence standards** that are aligned with international initiatives such as the OECD Guidance and the UN Group of Experts due diligence guidance.
65. Recycled metal that is reclaimed from end-user or post-consumer products or scrap metals should be exempt from this rule where the issuer has a reliable process reasonable inquiry and due diligence for determining the metals are from recycled sources.

We believe the Commission should adopt a definition of recycled to be included in the final rule that is consistent with the OECD definition.

Comments from the Multi-stakeholder letter submitted to the SEC August 22, 2011

The MSG recommends that there should be **no delay** in the issuance of the rule to implement Section 1502.

Stockpiled minerals and other existing minerals in inventory on hand or at a warehouse prior to January 1, 2012, should be exempt from due diligence reporting.

Comments from the Multi-stakeholder letter submitted to the SEC November 10, 2011

Auditing
Issuers should be able to rely on such an industry-wide process [RE Conflict Free Smelter Program] to avoid burdensome and complicated administration of repetitive audits.

Our view is that the statute assigns to the SEC (not the auditor) the responsibility to determine whether the due diligence process used by the issuer is reliable.

The scope of the audit should be limited to verification of the policy, process and information used by the issuer in conducting its due diligence. We recommend that the SEC clearly state in the final rule that the **audit scope is of the issuer's report and not of the supply chain**, which will minimize cost and prevent auditors from broadening the scope of the audits to mitigate their perceived or real liability.

The GAO Government Audit Standards (GAGAS) provides two audit options the MSG deems appropriate for an issuer to utilize to audit the CMR: 1) attestation engagement; and 2) performance audit. We strongly suggest determining which option to utilize should be left to the discretion of the issuer and its auditor.

Timing and Accessibility

We request that the SEC rule synchronize the collection of the information contained in the Conflict Minerals Reports from all issuers on a calendar year basis. The MSG recommends that all issuers begin exercising and reporting due diligence on the source and chain of custody for the subject minerals used in their products **on a common calendar date.**

The rule should require each filer to make the Conflict Minerals Report easily accessible to investors through a variety of means (e.g. a prominently displayed link on **a corporate website**, etc.).

Stockpiles

Clarification to the MSG letter submitted dated August 22, 2011:
Although these materials are exempt from reporting, if an issuer can adequately document that the minerals in the stockpiles are 'conflict free' based on due diligence adhering to international norms that was conducted prior to the effective date of this rule and that issuer chooses to voluntarily submit such due diligence, **then these minerals could be designated as 'conflict free'.**