**Jessica Lemos**

*Director, International Trade Policy*
*International Economic Affairs*

August 1, 2012

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

Re: July 18, 2012, Meeting with SEC Staff on Section 1502 of the Dodd-Frank Act

Dear Chairman Schapiro,

On July 18, 2012, staff from the U.S. Securities and Exchange Commission (SEC) Corporate Finance Division met with member companies from the National Association of Manufacturers (NAM). The purpose of the meeting was to discuss our concerns with the proposed rule to implement Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). The NAM remains especially concerned that the final rule could severely impact small- and medium-sized businesses, many of which comprise the extraordinarily complex supply chains of manufacturers, and could have a detrimental effect on the competitiveness of U.S. manufacturers, as well as on the jobs they create.

With the Sunshine Act notice announcing that the SEC will consider whether to adopt the final rule on August 22, 2012, we ask that the SEC consider our views as the Commission finalizes the text of the rule. NAM member companies raised a number of concerns with SEC staff, and those concerns are summarized below for your reference:

- Phase-in Period and "Indeterminate Origin" Category: A three to five year phase-in period with an "indeterminate origin" category remains essential to allow manufacturers to continue developing the information and reporting infrastructure necessary to facilitate meaningful compliance. Such infrastructure remains incomplete.
- "Reasonable Country of Origin" Inquiry: The final rule should reflect existing risk-based compliance mechanisms that companies have used to achieve other key government policy objectives to increase transparency in global supply chains, such as industry-wide standard contract terms, training, and sourcing policies.
- Recycled Materials: The use of recycled materials, both industrial and post-consumer scrap, should be encouraged to reduce the demand for conflict minerals. Therefore, such materials should be exempt from the requirements of the final rule, or at a minimum, issuers should be able to verify the nature of recycled materials by conducting a reasonable inquiry.
- Audit Design: Requiring auditors to verify the implementation of internal controls and procedures in addition to their design will dramatically increase audit costs, and therefore, the final rule should limit the scope of the independent audit requirement to verifying audit design only.

- Requirement to Furnish, not File: In the proposed rule, the SEC stated that requiring issuers to furnish documents submitted pursuant to Section 1502 of the Dodd-Frank Act was "not inconsistent with the Conflict Minerals Provision."[1] NAM urges the SEC to retain that approach in its final rule.
- Small Business Impact: NAM maintains that a substantial percentage of small- and medium-sized manufacturers could be impacted by the final rule because they will be asked by their customers (larger suppliers and issuer manufacturers) to provide origin information for the designated minerals as part of those larger firms' due diligence. NAM urges the SEC to consider and work to mitigate the effects of the final rule on small- and medium-sized businesses.

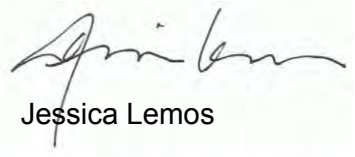
A detailed overview of NAM member companies' concerns is attached.

NAM member companies remain steadfast in their support for the underlying goal of Section 1502, to address human rights atrocities occurring in the Democratic Republic of the Congo (DRC) and adjoining countries. As part of their commitment, NAM members continue engaging in efforts to create the necessary infrastructure to facilitate compliance with the proposed rule and to prevent the use of conflict minerals from the DRC and adjoining countries. Examples of these efforts include participation in industry-wide smelter certification programs and in the Organization for Economic Cooperation and Development's (OECD) pilot programs on its Due Diligence Guidelines. While a number of these efforts have been underway since the enactment of the Dodd-Frank Act two years ago, the work to establish necessary infrastructure and capacity for manufacturers is far from complete, constricting the ability of issuers to comply with the rule as proposed and incurring significant costs in the effort to do so. In fact, even the GAO acknowledges that the necessary infrastructure and capacity to comply with the regulation as proposed do not yet exist.[2]

On behalf of our 12,000 member companies, the NAM cannot overstate the tremendous importance of finalizing a final rule that is feasible and effective. Such an approach not only best serves the underlying humanitarian purposes of the law, but also ensures and protects the competitiveness of manufacturers and the jobs they support and create in the United States.

As you finalize the text of the rule that the SEC will consider on August 22, 2012, we, the NAM, urge you to account for not only the complexities of global supply chains and the ongoing development of the necessary information and reporting infrastructure but also the impacts on small- and medium-sized businesses, the competitiveness of manufacturers, and on U.S. jobs.

Sincerely,



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[1] See 75 *Federal Register* 80960.

[2] GAO Report to Congressional Committees, Conflict Minerals Disclosure Rule: SEC Actions and Stakeholder Developed Initiatives, July 2012. GAO-12-763

NAM MEMBER CONCERNS RAISED DURING JULY 18, 2012, MEETING WITH SEC STAFF

**Phase-in Period and "Indeterminate Origin" Category**

It is essential that manufacturers have a three to five year phase-in period with an "indeterminate origin" category to allow them to continue developing the information infrastructure necessary for compliance. Compliance frameworks are incomplete, making it a tremendous burden for manufacturers to account for the origin of the minerals used in their supply chains with the requisite assurance. In addition, many contracts with suppliers have terms of several years, and can be modified to accommodate Section 1502 requirements only as they are renewed. Without a sufficient phase-in period and an indeterminate origin category, the final rule will essentially encourage manufacturers to source from outside central Africa, resulting in a "de facto" embargo against minerals from that region.

We urge that during the phase-in period, the SEC allow for an "indeterminate origin" category for products manufactured or produced with minerals for which issuers, despite reasonable efforts, are unable to determine the origin. At least during the first years of implementation, issuers should not be required to file a Conflict Minerals Report (CMR) for such minerals. Requiring issuers to submit a CMR and identify their products as "not DRC conflict free" when the issuer has not been able to determine the origin after making reasonable inquiry would significantly increase reputational risk, place SEC registrants at a competitive disadvantage, and damage investor relations even if the issuer has policies in place prohibiting the use of conflict minerals from the DRC or adjoining countries. Furthermore, the required accompanying CMR audit would be unlikely to reach different conclusions despite an enormous cost to the issuer.

**"Reasonable country of origin" inquiry**

Both during and after any phase-in period, it will be critical for companies to be able to comply with the final rule without having to attempt to trace back to the mine or smelter of origin. Companies must be able to make such a determination by using the same top-down, risk-based compliance mechanisms they have always used when government seeks to achieve policy objectives through the supply chain, such as industry-wide standard contract terms, training, and sourcing policies.

In a modern supply chain, determining the origin of all conflict minerals with certainty is unattainable at virtually any price. Therefore, it is imperative that the final rule have a "reasonable country of origin" threshold determination. The rule should reflect the understanding that registrants can comply with the letter and spirit of the Dodd-Frank Act by making a reasonable, good-faith determination using flow-down clauses in supplier contracts, company policies and use of consensus best practices, and participation in industry-wide, public-private, or international initiatives.

Such approaches are routinely used to achieve other vital government and social objectives, including protection of customer safety and health, quality assurance, environmental protection, and protection of national security and classified technology.

**Recycled Material**

Recycled material, both industrial and post-consumer scrap, should be exempt from filing a Conflict Minerals Report (CMR). Requiring users of such materials to file a CMR would undermine a growing trend to use recycled materials to reduce manufacturers' environmental footprint, and would undercut the U.S. Government's strong and consistent support for recycling. Furthermore, the details required in a CMR are not available for either industrial or post-consumer recycled materials due to the various forms of recycling and thousands of consolidators, reclaimers, and scrap dealers, both foreign and domestic.

The NAM believes the use of recycled metals should be encouraged to reduce the demand for minerals that would support armed groups in the DRC and adjoining countries. The burdens of carrying out extensive due diligence to determine that the materials are indeed recycled, the burden of filing a CMR, and the burden of providing for expensive third party audits should not be imposed on recycled materials because there is no discernible benefit from doing so. It is imperative that the SEC exempt recycled materials, or at a minimum, allow issuers to verify the nature of the recycled materials by exercising a reasonable inquiry.

**Audit Design**

Any independent audit required as part of a CMR must relate to the design of controls and procedures and not their execution. Requiring external auditors to verify the implementation of procedures that have been found compliant with relevant internationally or nationally accepted standards will drastically increase audit expense and burden on American manufacturers.

**Furnished not filed**

Any document submitted pursuant to section 1502 should be furnished, not filed, for the reasons expressed in the proposed rule.

**Effect on Small Business**

As described in the NAM's submission for public comment in March 2011, the SEC has also grossly underestimated the impact of the proposed rule on small businesses because it only considered those small businesses that are required to file annual reports with the SEC. The SEC states that the proposal would affect only 793 small entities that file annual reports with the Commission under the Securities Exchange Act. This estimate ignores the fact that when issuers seek to establish that their supply chains are free of conflict minerals, they will have to turn to their first-tier suppliers and require due diligence. Those suppliers will turn to their suppliers, and so on throughout the supply chain. Ultimately a substantial percentage of America's 278,000 small and medium-sized manufacturers could be adversely affected by the requirements to provide information on the origin of the minerals in the components they supply to companies which file annually with the SEC.

Smaller firms will be especially impacted if the SEC fails to create an "indeterminate origin" category, as the burden would fall on suppliers to provide information regarding the source of the minerals. In an effort to estimate the cost of obtaining this information, it must be recognized that small businesses will be asked to use the same diligence as issuers. Smaller companies will therefore be disproportionately affected by the requirements under this regulation. Due to the lack of infrastructure, smaller firms may not be able to provide information

on the origin of the minerals to the issuers. We urge the SEC to take into consideration the effects of a final rule on the competitiveness of our small- and medium-sized companies, the jobs they support, and their importance to the recovery of the U.S. economy.