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Via email to rule-comments@sec.gov

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7-40-10, Section 1502 of the Dodd-Frank Act

Ladies and Gentlemen:

This letter is submitted on behalf of the International Human Rights Committee of The Association of the Bar of the City of New York (the "Association") in response to the Commission's request for comments on the proposed changes to the annual reporting requirements of issuers to implement Section 13 (p) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), which was added by Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

The Association is an independent non-governmental organization with more than 23,000 members in over fifty countries. The Association has a long history of dedication to human rights, most notably through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world, and has frequently commented on matters relating to the Exchange Act and other securities laws through its Securities Regulation and Financial Reporting Committees. All three of these Committees submitted joint comments to the Commission's staff in December on the proposed form of reporting under Section 1502 of the Dodd-Frank Act.

These comments are directed at what we consider the most significant portions of Section 13 (p), which aims to curtail human rights abuses resulting from the mining of "conflict minerals" in the eastern Democratic Republic of the Congo ("DRC") and adjoining countries (the "DRC Neighboring Countries").

We recognize that the conflict minerals problem is a complex one and applaud the Commission for its careful review of Section 1502 and its crafting of proposed rules to implement Section 13 (p). We value the Commission's consideration of comments and recommendations by stakeholders, including industry groups and non-governmental organizations, as well as its present request for comments issued on December 15, 2010. These comments focus, as requested, on the following issues: (a) the companies covered by Section 1502; (b) the standards for determining the amounts and identity of minerals necessary to the functionality or production of merchandise; (c) the standard for country of origin inquiries; and (d) requirements for the exercise of due diligence with respect to supply chains of conflict minerals. In addition, we urge the Commission to define "armed group" broadly.

Our suggestions are as follows:

(a) We believe a reporting firm is covered by Section 13 (p) if it manufactures or contracts to be manufactured products that contain conflict minerals, as defined in Section 1502 of the Dodd-Frank Act. The Commission clearly states that this was the legislative intent of Section 1502 and we support this view. We concur with the Commission's stated intention that the rules apply to reporting firms selling generic products under their own name or a separate brand name, but not to retailers who do not do so and have no influence over the manufacturing of products they sell.

In determining covered firms, we do not think the term "manufacture" has to be defined, other than to make clear that the term includes persons who either mine conflict minerals or contract for the mining of such minerals. In answer to number 14. of the Commission's request for comments, we do not believe the rules should only apply to those mining issuers who engage in any additional processes to refine and concentrate the mineral or make other changes to the mineral's basic composition.

(b) We agree with the Commission's proposal not to include a materiality threshold or a de minimis rule in the reporting requirements. As to which minerals are necessary to the functionality or production of an issuer's merchandise, we agree with two sponsors of Section 1502 that products that contain conflict minerals that are "naturally occurring" and "unintentionally included" in a product should be exempted, provided, they are not intentionally included in either the production process or the end product.[1] Although the Commission does not have to define "necessary to the functionality or production of a product," it should exempt naturally-occurring and unintentionally-included minerals from its rules but make clear that minerals that are intentionally contained in the production process (even if they are not used in the end product) are included within "conflict minerals."

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[1] Letter from Senator Richard J. Durbin and Representative Jim McDermott to Hon. Mary Schapiro, Chairman, U.S. Securities and Exchange Commission, dated October 4, 2010, *available at* http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-22.pdf.

We also suggest that the Commission regard a component in a product necessary to its functionality if it is needed for either its basic function or another commercially valuable function of that product. We do not believe that "basic function" in this regard needs to be defined since it will differ for each product.

(c) With respect to the country of origin inquiry, we believe that a reasonable country of origin inquiry standard is an appropriate measure for determining whether a firm's conflict minerals originated in the DRC countries for purposes of the rules implementing the Conflict Minerals provision. We further believe that the Commission should provide additional guidance about what would constitute a reasonable country of origin inquiry.

Specifically, we urge the Commission to adopt a supplier declaration approach[2] that consists of supply chain entities declaring the reasonable efforts they have taken to ensure that all conflict minerals in their materials and products are sourced from a "compliant smelter." A smelter would be compliant if it meets the requirements of an independent and competent individual or industry-wide audit process.[3] The audit should comply with the criteria of the Organization for Economic Cooperation and Development (the "OECD") for transparent third-party audits of smelter's due diligence practices.[4]

(d) With respect to the due diligence requirement itself, the measures taken to exercise due diligence on the source and chain of custody of conflict minerals are a crucial component of the Conflict Minerals Report. However, the proposed rules do not indicate the standard for this required supply chain due diligence. In light of the Commission's findings that a firm's Conflict Mineral Report must include reliable due diligence processes, we recommend that the rules require use of a specified due diligence standard for supply chain determinations and other information required in their Conflict Minerals Report, as set forth by the United Nations Group of Experts (the "Expert Group") and the OECD.[5] Rather than permitting issuers to conform to whatever their own due diligence standards may be in making their supply chain determinations, we recommend reference, as minimum due diligence standards, to the Expert Group's and OECD's due diligence guidelines, which require documentation and verification of the firm's information and establishment of supply chain mechanisms of control and transparency.

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[2] Such an approach has been suggested in a letter dated November 17, 2010 submitted to the Commission by Patricia Jurewicz (the "Multi-Stakeholder Group Letter"), representing a consortium of NGOs, large issuers and socially-responsible institutional investors, *available at* http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-67.pdf.

[3] See id. at paragraph 8 a. of Consensus Recommendations for the SEC Conflict Minerals Resolution.

[4] OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, as approved by the OECD Investment and Development Assistance Committees and endorsed in the Lusaka Declaration adopted on December 15, 2010, Step 4: A. of the Supplement on Tin, Tantalum and Tungsten, pages 31-33, *available at* http://www.oecd.org/dataoecd/ 62/30/46740847.pdf.

[5] See S/2010/596, pages 87-96 and See id. at footnote 4., pages 10-16 and 19-42.

To provide uniform control and transparency, the rules should require due diligence mechanisms at least equal to those established by the Expert Group and the OECD for both "upstream" supply chain (i.e., from mines to the smelters) and "downstream" supply chain (i.e., from smelters to the consumers) documentation and verification.

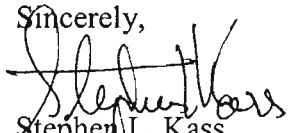
We also believe the rules should require reporting firms that cannot, after due diligence, determine the origin of the materials used in their products to submit a Conflict Minerals Report and an independent audit of such report to ensure such issuers cannot easily avoid their obligations and disclosure requirements prescribed by these rules. All audit reports should be carried out by knowledgeable auditors who meet the requirements of the OECD's criteria for the competence of auditors.[6]

Although the Commission did not request comments on the definition of "armed group" as set forth in Section 1502 (e) (3), we suggest that the Commission use a definition of "armed group" that includes the Congolese military (FARDC). The inclusion of FARDC in the definition of "armed group" is essential because of widespread evidence that its members have committed war crimes, attacked villages, and raped and killed civilians.[7] Government soldiers, who are supposed to be maintaining law and order in the DRC, have also been implicated in extracting conflict minerals.[8] Many former members of rebel groups joined the Congolese army's FARDC troops as part of a peace initiative.[9] During a rapid integration process, at least 12,000 combatants from the Rwanda-backed Congolese group, known as the National Congress for the Defense of the People (CNDP) entered the FARDC's ranks.[10] Among them is the former CNDP rebel commander Bosco Ntaganda, who is now a general in the Congolese army despite an arrest warrant issued for him by the International Criminal Court.[11]

We therefore recommend that the SEC include the FARDC in its understanding of an "armed group" and take no action to exclude the FARDC from that term.

We thank you for giving us the opportunity to comment on the implementation of Section 13 (p) and would be happy to discuss any of these suggestions in greater detail.

Sincerely,



Stephen L. Kass
Chair

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[6] See id. at footnote 4, A. 3 b., page 32.
[7] See, e.g., Human Rights Watch, DR Congo: Hold Army to Account for War Crimes, May 19, 2009, *available at* http://www.hrw.org/en/news/2009/05/19/dr-congo-hold-army-account-war-crimes.
[8] Taylor Toeka, Illegal Mining Fuels DRC Conflict, Relief Web. January 12, 2010.
[9] allAfrica.com, U.S., UN Accuse Forces of 'Crimes against Humanity, March 12, 2010.
[10] See id. at footnote 5, page 2.
[11] Human Rights Watch, Government Should Urgently Act to Arrest Bosco Ntganda, allAfrica.com, October 10, 2010.