August 16, 2012

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

Re: Conflict Minerals Section 1502 of the Dodd Frank Act, File No. S7-40-10

Dear Ms. Murphy:

The Society of Corporate Secretaries & Governance Professionals (the "Society") appreciates the opportunity to respond to the Proposed Rules for Implementing Section 1502 of the Dodd-Frank Act, SEC Rel. No. 34-63547 issued on December 15, 2010 by the Securities and Exchange Commission (the "SEC" or the "Commission").

Founded in 1946, the Society is a professional membership association of more than 3,000 attorneys, accountants, and other governance professionals who serve approximately 1,200 companies of most every size and industry. Society members are responsible for supporting the work of corporate boards of directors and the executive management of their companies on corporate governance and disclosure matters.

We refer to our earlier comment letters dated March 3, 2011 and June 21, 2011. This letter supplements those and expands on one point raised therein, i.e., our support for proposed Instruction 2 to Regulation S-K Item 104, under which disclosure of the Conflict Minerals Report (the "CMR" or the "Report") and independent Audit (as defined below) should be "furnished" rather than filed.

The CMR Should Be Furnished Rather Than Filed

If the Final Rule requires that conflict minerals disclosure be filed rather than furnished, it would unfairly increase the risk of liability on officers and directors for a new and unprecedented type of disclosure. In addition, it would increase the costs of such disclosure without corresponding benefit to investors or the Democratic Republic of the Congo (the "DRC").

The Dodd-Frank Wall Street Reform and Consumer Protection Act states that if required, an issuer must "submit" (not file) a report to the SEC (Section 13(p)(1)(A) of the Securities Exchange of 1934). The Proposed Rule in Section 229.104(b)(1) states that if an issuer has products which contain conflict minerals necessary to such product's functionality or production, and such minerals originated in the Democratic Republic of the Congo, then the issuer must

furnish a CMR that includes an independent private sector audit and report (the "Audit") as an exhibit to its annual report.

The Proposed Rules clearly contemplated that the CMR and Audit would be "furnished," rather than filed; the Society supported this position in its previous letter and continues to do so.

If the Proposed Rule is changed and such disclosure is required to be "filed," an issuer's principal executive officer and principal financial officer would be subject to potential civil or criminal liability under Sections 13a-14(a) or 15d-14(a) of the Exchange Act and 18 U.S.C. Section 1350. In addition, if the information is automatically incorporated by reference into registration statements filed under the Securities Act of 1933, it will subject registrants and their officers and directors to strict liability under Section 11 of that Act, with no "due diligence" defense. The Society believes this would be unfair given the unique and unprecedented nature of the disclosure itself. Such disclosure will require companies to estimate and approximate; and, for some registrants it will cover millions of transactions involving hundreds of thousands of suppliers. More importantly, for all registrants, the disclosure will involve the conduct and representations of third parties outside of the company's control.

The Society believes that this type of data has not been compiled in the past for any purpose. Indeed, as Chairman Schapiro has testified, the informational infrastructure necessary for issuers to develop such data does not currently exist. Moreover, the purpose of this social-type disclosure is qualitatively quite different from typical financial disclosures subject to certification. As the Proposing Release states:

> It appears that the nature and purpose of the Conflict Minerals Provision is for the disclosure of certain information to help end the emergency humanitarian situation in the eastern DRC that is financed by the exploitation and trade of conflict minerals originating in the DRC countries, which is qualitatively different from the nature and purpose of the disclosure of information that has been required under the periodic reporting provisions of the Exchange Act. (footnotes omitted)

In addition, the language of the statute itself says "submits" – not filed – and while some co-sponsors of the legislation have stated after the rulemaking proposal was published that they intended "submit" to mean "filed," the legislative history is silent and the common understanding of the term "submit" in the securities law context means "furnished" not "filed."

Finally, as the Proposing Release recognized, while information "furnished" to the Commission is not subject to the liability standard of Section 18 of the Exchange Act, failure to provide the required disclosure nevertheless would be penalized. "[U]nder Exchange Act Section 13(p)(1)(C), failure to comply with the Conflict Minerals Provision would deem the issuer's due diligence process 'unreliable' and, therefore, the CMR 'shall not satisfy' our proposed rules. Also, issuers that fail to comply with our proposed rules would be subject to liability for violations of Exchange Act Sections 13(a) or 15(d), as applicable." (footnotes omitted) And any knowingly or recklessly false statement to the Commission in the furnished document would subject the registrant to liability under Rule 10b-(5). In short, the collection, analysis, and

formulation of the required "furnished" information will continue to be covered by issuers' disclosure controls and procedures.

Heightened Liability Costs for "Filed" Disclosure Outweighs Any Benefits to Investors

In sum, the Society believes the risk of increased liability to corporate officers for the filing and certification of such conflict minerals disclosure and the costs associated with the potential heightened liability and avoidance thereof (such as increased D&O liability coverage) would outweigh any benefits to investors, or to the DRC.

Summary

For these reasons, we respectfully request that the SEC maintain the proposed Instruction 2 to Regulation S-K Item 104 as it was set forth in the Proposing Release. We appreciate the opportunity to comment.

Respectfully submitted,

Chair, Securities Law Committee
The Society of Corporate Secretaries & Governance Professionals

cc: Mary L. Shapiro, Chairman
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