NIOTAN

January 30, 2011

Ms. Mary L. Schapiro
Chairwoman
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Proposed Rules to Implement Section 1502 (Conflict Minerals) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (S7-40-10).

Dear Chairwoman Shapiro:

I write regarding the SEC's draft rule addressing Section 1502 of the Dodd-Frank Act, with respect to conflict minerals. As CEO of Niotan, Inc., a U.S. tantalum-processing company, I strongly support the Act. Even prior to the law's enactment, I met on various occasions with members of both the House of Representatives and the Senate and their staff to support legislation designed to address the conflict minerals problem. I also submitted a formal letter of support for the draft conflict minerals legislation sponsored by Congressman Jim McDermott (D-WA).

The Act's goal of reducing the flow of financing to conflict actors in the Democratic Republic of the Congo ("DRC"), while minimizing the negative economic impact on local stakeholders, is worthy. It is therefore imperative that the SEC rule meet the goal of the legislation, and apply fairly and comprehensively to all companies that mine, manufacture, use, and sell products that incorporate these minerals. For instance, the reporting requirements should cover not only all issuers for which the covered minerals are necessary to the functionality or production of a manufactured product, but should also cover companies that contract for the production of such goods. Ideally, the rule would also cover retailers. Absent such broad coverage, the regulation would create significant loopholes and a severe competitive disadvantage for U.S. companies -- for example, end-user companies could contract for products to be made overseas by non-reporting companies, and thus remove from scrutiny the entire supply chain related to those products. This could cause manufacturing to shift overseas so that end-users or retailers could escape the reporting requirements

The SEC reporting requirements should define minerals that are "necessary to the functionality or production of a product" to include minerals that are "used" in the manufacture of the product. This would cover situations where minerals are used in manufacturing but not present in the final product, as well as instances in which the minerals are in tools used to produce the final product. In the absence of such specificity, the rule will fail to ensure reporting on the use of such tools or catalysts, thus leaving out a significant market for the minerals and undermining the purpose of the law. Additionally, creating a "use" standard would ensure that a manufacturer cannot try to avoid the reporting requirements by arguing that, although it uses a mineral in a production process, the mineral is not "necessary" because another mineral could be substituted for the same purpose.

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The SEC reporting requirements also should close loopholes by covering mining companies, as these companies are best able to conduct due diligence and determine the origin of minerals. They are therefore a crucial link in supply chain due diligence.

The SEC rule should incorporate gold, in line with the Act, because gold is one of the most significant sources of direct funding for conflict actors in the eastern DRC, with $1.24 billion being smuggled out in 2009 alone, according to the U.N. Gold is the most valuable by weight of the minerals covered, and is therefore easily smuggled. If the rule does not cover gold, it is highly unlikely to accomplish the law's purpose of ending the flow of money to conflict actors in the DRC.

As important as it is for the rule to be fair and comprehensive, it is also vital that the parties complying with the rule not incur incidental and undeserved reputational damage for doing so. Calling the exhibit report a "Conflict Minerals Report," despite the fact that many, and in fact, most, companies required to submit it may not source minerals that support conflict, is likely to cause such undeserved reputational damage. This name in effect penalizes companies for simply sourcing from the DRC or surrounding countries, even if those minerals have no connection to conflict actors. The report should therefore bear a different name, such as "Report on Minerals Sourced from Central Africa," which would more clearly illustrate what the report contains.

Niotan appreciates the effort that the SEC has put forth to promulgate a rule that will achieve the goal of the Dodd-Frank Act – stemming the flow of mineral-related funds to conflict actors, thus helping to end the conflict in the DRC. I hope that these comments will be helpful in securing that goal. If you have any questions, please do not hesitate to contact me at (775) 283-0226.

Sincerely,

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