The Honorable Mary L Shapiro, Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: SEC Initiatives under the Dodd-Frank Act – Special Disclosures Section 1502 (Conflict Minerals)

Via email: rule-comments@sec.gov

Dear Chairman Shapiro:

As President of the Americas region of Semiconductor Equipment and Materials International (SEMI), an industry group representing suppliers to the global microelectronics manufacturing industry, I am writing to you regarding Sec. 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. SEMI submitted comments to the Securities and Exchange Commission (SEC) prior to the release of the proposed rules on this matter, and would now like to submit the attached comments in response to those proposed rules.

SEMI supports the goals of Section 1502 of preventing human suffering in the Democratic Republic of Congo (DRC) and related areas. SEMI believes that all members in the supply chain for Conflict Minerals have a role to play in ensuring the basic human rights of everyone involved in the extraction, processing and use of the minerals and their derivatives, specifically tin, tungsten, tantalum and gold. SEMI also believes that each party's role should reflect their practical influence on upstream suppliers throughout the supply chain.

Working with a diverse group of our member companies, SEMI has organized the attached responses to the questions posed by the SEC as part of its proposed rules. We have done our best to properly respond, having a particular goal of imparting our experiences with complex supply chains to the SEC in the hopes that the final rule reflects the reality of our business environment. As the SEC moves forward with the rules regarding reporting requirements for publicly traded companies. SEMI would like to point out that Question # 16 ("Should our rules define the phrase "necessary to the functionality or production of a product," or is that phrase sufficiently clear without a definition?") as published in the Federal Register, is our top priority. Clarity with this is the key scoping issue for our industry and it will greatly determine how our members are able to comply with Sec. 1502 of the Dodd-Frank financial reform bill.

Thank you for your consideration of the attached materials in response to the SEC proposed rules regarding "conflict minerals." SEMI believes that our members' collective knowledge and experience with complex supply chains with be valuable to the SEC in completing these rules.

Sincerely,

Karen Savala, President, SEMI Americas

Question # 1

Question – "Should our reporting standards, as proposed, apply to all conflict minerals equally?"

Answer – No. The final rules should apply to the specific minerals: cassiterite, columbite-tantalite, gold and wolframite, and to the specific derivatives of those minerals: tin, tantalum, gold and tungsten.

The definition of conflict mineral should reflect this by reading "Conflict Mineral. The term conflict mineral means columbite-tantalite (coltan), cassiterite, gold, wolframite and the specific derivatives tantalum, tin, gold and tungsten."

Elsewhere in the regulation, the SEC may wish to include a provision addressing the potential for the addition of other minerals and their derivatives determined by the Secretary of State to be financing conflict in the DRC or adjoining countries by issuing subsequent rules.

Further Commentary – The Act includes the four minerals mentioned above, but also includes the concept "any other mineral or its derivative...etc.." This introduces too much ambiguity. Only the four specific minerals should be within the scope of the rules. If the SoS chooses to designate additional minerals per the Act, then the new minerals and derivatives can be introduced into the definitive list provided in the rules according to due process of revision.

The Act does not delineate particular mineral derivatives. In surrounding legislative discussions, typically gold, tin, tungsten and tantalum are mentioned. But there are other possible derivatives from these same minerals. The focus seems to be implicitly on currently commercially significant derivatives, but this is not explicitly stated. It should be considered, for example, that Oxygen and Iron are possible derivatives of Wolframite, but Wolframite is not currently a significant commercial source for them. Nonetheless they could rightly be considered Wolframite "derivatives." For legal certainty, the rules should be structured to limit the list of derivatives that must be considered to the four specific derivatives proposed above.

Question # 10

Question – "Should our rules, as proposed, apply both to issuers that manufacture and issuers that contract to manufacture products in which conflict minerals are necessary to the functionality or production of those products?"

Answer – Yes.

Further Commentary – Everyone who is enriched by explicitly specifying inclusion of conflict minerals (within the fair concept of "necessary to the functionality or production" as discussed elsewhere) has a moral responsibility for the DRC issue. The more issuers there are who must determine the conflict status of their related minerals, the more information and understanding there will be in the supply chain (both within and external to the jurisdiction of the Act) , and so there will be greater success of for all in industry.

Question # 11

Question – "Should we require a minimum level of influence, involvement, or control over the manufacturing process before an issuer must comply with our proposed rules? If so, how should we articulate the minimum amount? Should we require issuers to have nominal, minimal, substantial, total, or another level of control over the manufacturing process before those issuers become subject to our rules? How would those amounts be measured? Should we require that issuers must, at minimum, mandate that the product be manufactured according to particular specifications?"

Answer – Yes, Each person with a reporting requirement should only be responsible for obtaining conflict mineral information from direct suppliers. An organization can only be reasonably assumed to be able to exert control over those which it has a direct relationship. If the person does not explicitly specify inclusion of conflict minerals or tin, tungsten, tantalum or gold in products or raw materials it obtains from any of its direct suppliers, he should not be required to report. If explicit specifications for inclusion are made for a product or raw materials from a limited number direct suppliers, the person should be responsible to report on conflict mineral content with regard to only those specific products or raw materials.

Using this concept, a purchaser of a printed circuit board for incorporation into their product would not be responsible for reporting on tin or gold content in the circuit board, unless it explicitly specified that the board manufacturer use tin or gold in the manufacture of the printed circuit board. If the supplier, determines based on their manufacturing preferences or technical requirements that they choose to use tin:lead solder and gold plated connector pins, for example, the purchaser of the printed circuit board would not be responsible for reporting. If the manufacturer of the printed circuit board is a person covered within the scope of this regulation, he would have a reporting requirement for the tin and lead he obtains for inclusion in his product.

If the same purchaser above also explicitly specifies and purchases 40:60, tin:lead solder for other uses in his manufacturing process, he would be required to report on this tin content, but not also for the tin in printed circuit board.

This structure would still require reporting throughout the supply chain without putting an undue burden on downstream manufacturers to attempt to obtain information from indirect suppliers separated by many levels in the supply chain.

Question # 12

Question – *"Is it appropriate to consider issuers who sell generic products under their own labels or labels that they establish …?"*

Answer – Yes.

Further Commentary – As explained in more detail in our response to Question # 10, everyone who is enriched where the conflict minerals are "necessary" should have responsibility for discovery and reporting under the rules.

It is also important to note that all of the issuers for which exemptions are contemplated in this call for comments (such as in this Question # 12) could well be the supplier of an issuer who is not exempt. How, then would that purchasing issuer get the information they need if they lack significant economic control over the supplier otherwise?

Question # 13

Question – "*Is it appropriate for our rules, as proposed, to consider reporting issuers that are mining companies as "persons described" under Section 1502?"*

Answer – Yes.

Further Commentary – It is fairly certain that any mining issuer who is under jurisdiction of this law would not be mining conflict minerals. However, there must be availability of data on both sides of the conflict-free question, and so it is important that "clean" mines robustly identify themselves and their output product as "conflict free" to set the stage for downstream users of their minerals/products.

Question – *"Does the extraction of conflict minerals from a mine constitute "manufacturing" or "contracting to manufacture" a "product" such that mining issuers should be subject to our rules?"*

Answer – Yes.

Further Commentary – Ore is the output of a mining operation. It is indeed "manufactured" as its extraction is, in essence, a "repackaging" and relocation of particular parts of the Earth's crust into a more commercially viable form. The potential conflict mineral content of the ore is certainly intentionally and explicitly "added" by the mining company by means of selecting particular pieces of earth to extract for further sale and processing in the supply chain.

If a mining company were truly blindly extracting earth and selling it without any care or prejudice as to what was contained in that earth, then semantically, they might be able to claim that any conflict minerals that might be in their output earth were not "necessary to the production" of their product.

Question # 16

This is a Priority Issue for SEMI.

Question – "*Should our rules define the phrase "necessary to the functionality or production of a product," or is that phrase sufficiently clear without a definition?*"

Answer – Yes, the meaning of the phrase "necessary to the functionality or production of a product" should be defined and explained in the rules.

Question – *"… how should it be defined?"*

Answer – The phrase should be defined and explained to the effect of…

"A substance is deemed to be necessary to the functionality or production of a product if the issuer under consideration explicitly and intentionally adds it, or explicitly specifies it be added, to the product or raw material they produce or purchase.

It is not considered as intentionally added by the issuer under consideration if it is present in a sub-component acquired by the issuer based on the unilateral decision of the supplier or a sub-contractor, or a party further upstream in the supply chain."

In the final analysis, the company that decides (for whatever reason) to intentionally add conflict minerals to a manufacturing or production process should be responsible for reporting on the country of origin of these minerals. More importantly, if a company has the ability to intentionally introduce or add conflict minerals into a manufacturing or production process, they are also more than likely in the best position to make socially responsible choices about their sources of supply - which is the real problem we are trying to solve.

Question # 17

Question – "*…should we delineate it to mean … only if the conflict mineral is necessary to the product's basic function?"*

Answer – No, the phrase **should not** be delineated to be related only to a product's basic function.

Further Commentary – If an issuer is, indeed, intentionally adding a conflict mineral derivative to their product, even if it is not for the purpose of the basic product function, they should be responsible for reporting, etc.

For example, if an issuer is acquiring gold ornamentation on a product (e.g. a high end cell phone), they are actively and knowingly contributing to the demand for gold and so should take responsibility for determining and reporting on the origin of that gold.

"Necessary to the product's basic function" is, itself, a source of potential semantic confusion. Consider, for example, jewelry. The function of jewelry could be seen as to adorn the body. Gold is not necessary for the aspect of adornment, but it does impact the commercial viability of the product (i.e. aluminum jewelry does not sell as well). Likewise on the technical side, the basic function of a conductor could be argued as to carry electricity. That a conductor might be coated with tin or gold does not significantly affect its basic function, but it does affect its long term stability (i.e. via corrosion inhibition) and so affects the general product marketability.

Question – "*… should our proposed rules consider those conflict minerals necessary to the automobile's functionality even if the automobile's basic function is for transportation?"*

Answer – Yes. **Within the limits of the concept presented in answer to Question # 16**. If the automobile manufacturer (an issuer) somehow intentionally and explicitly requires a potential conflict mineral derivative to be contained in the radio (e.g. tin plated electrical contacts to interface to the automobile electrical supply) then they should be responsible for reporting, etc.

Question # 18

Question – *"… should we delineate it to mean that a conflict mineral would be necessary to a product's functionality … because that conflict mineral would be contributing to the product's economic utility?"*

Answer – No. the phrase **should not** be delineated to be related to impact of a conflict mineral on a product's economic utility.

Further Commentary – Economic utility is very subjective and it can be the unforeseen consequence of a derivative buried deep within a sub-component (e.g. extending component life by preventing corrosion) of which the issuer under consideration has no direct knowledge.

Question – "*Does the fact that, if a conflict mineral is not "necessary" it, axiomatically, could be excluded from the product or the manufacturing process support such a broad reading?*"

Answer – Necessity must be appreciated in association with a particular perspective, and the finding of necessity can vary with that perspective.

Further Commentary – From a technical perspective, none of the conflict mineral derivatives anticipated to be used in common ways are so unique that their function could not be achieved by other materials or methods. For example, a tantalum capacitor could be replaced by a capacitor of another type, perhaps also requiring some other compensation in the circuit for the change. In this sense the minerals could be excluded from the product.

From a practical bill of materials control perspective a conflict mineral might not be deemed "necessary" because it is not explicitly specified. For example a bill of materials might specify the use of a particular programmable logic controller without any awareness that the controller manufacturer uses an integrated circuit (IC) made by a company which uses gold wire interconnects buried inside the IC encapsulation. However, the issuer **could not** exclude this gold from the product in any active/practical sense since they have no knowledge it is included.

Question # 19

Question – “Should we define the phrase to indicate that, as one letter suggested,…?”

Answer – No. While there are some commonalities of concept in this proposal from the letter with our preference stated in our response to Question # 16, it has a significant short-coming in that it is related to purchases “in mineral form.”

Further Commentary – While we are not entirely satisfied (as detailed in Question # 1) with the phrase “conflict minerals” meaning both derivative metals and the natural ores that do or could enrich conflict in the DRC, it seems fairly certain that “purchased in mineral form” would have to exclude purchases in refined form. Therefore this proposal would limit the scope of affected issuers to only a very few companies and, as most “mineral form” purchasers are likely not under the jurisdiction of the Act, it would have little to no actual effect on the trafficking of conflict minerals.

We would prefer the phrase to be defined to the effect of our suggestion in Question # 16, repeated here for convenience;

“A substance is necessary to the functionality or production of a product if the issuer under consideration explicitly and intentionally adds it, or causes it to be added, to the product they produce; or it is explicitly and intentionally called for by the issuer under consideration as a constituent in their product’s production process.

It is not considered as intentionally added by the issuer under consideration if it is present in a sub-component acquired by the issuer based on the unilateral decision of the supplier or a sub-contractor, or a party further upstream in the supply chain

Question # 20 (Part 1 of 2)

Question – *"Should we … only if the conflict mineral is intentionally included in a product's production process even if that conflict mineral is not ultimately included in the final product because it was removed or washed away prior to the completion of the production process?"*

Answer – **Yes**. This is reasonable. But with the very important qualification of "*intentionally included in a product's production process* **by the issuer under consideration** {or equivalent phrase}"

Note: Our proposal in Question # 16 addresses both the product and the production aspect of the issue, and is our preferred wording.

Further Commentary - This is consistent with our belief that an issuer should have discovery and reporting, etc… obligations for the potential conflict mineral derivatives they specify inclusion of, whether in their products or their production processes. While the test of "intention" could itself be difficult in some cases, we believe this is the minimum threshold for determining an issuer's obligation to impact the supply chain.

It is extremely important to limit the scope of the consideration to the production process defined by the issuer. It its broadest understanding, things such as national transportation infrastructure could be considered as part of the "production process" causing great confusion in setting responsibilities.

Question – *"Should we consider conflict minerals necessary to the production of a product if they are not contained in the product but they are necessary to the functionality or production of a physical tool or machine used to produce a product?"*

Answer – **No**. This is analogous to the situation of a component being integrated into a product that we speak of in Question # 16.

Further Commentary – The key point, as with purchased sub-components, is whether the issuer-under-consideration has intentionally and explicitly required a conflict mineral derivative to be included in the physical tool or machine. If they have not made an intentional and explicit requirement known to their physical tool or machine supplier via, for example, a purchasing contract, then they should not have discovery and reporting, etc, obligations.

Question # 20 (Part 2 of 2)

Question – *"Should we limit such an approach to certain kinds of tools or machines, and if so, which ones?"*

Answer – **No**. Regardless of what rule set is being applied (within the context of this SEC rule setting inquiry), it should be applied to all physical tools, machines or other production equipment equally.

Question – *"Should we be more specific and provide, as a letter recommended, … purchased in mineral form by the [issuer] and used by the [issuer] in the production of the final product but does not appear in the final product?"*

Answer – **No**. This proposal is similar to the proposal described in Question # 19, and our concern with it is similar to our concern expressed for Question # 19. There seems to be a significant semantic weakness is qualifying the criteria in terms of minerals "purchased in mineral form".

Question # 21

Question – *"…not consider conflict minerals occurring naturally in a product or conflict minerals that are purely an unintentional byproduct…?"*

Answer – Probably Not.

Further Commentary – We do not have sufficient metallurgical experience to comment on the possibility of conflict minerals occurring "naturally" in a product, but with consideration of both the base minerals and their derivative metals, elemental transformation does not seem possible in a production process, so appearance of such material as an "unintentional byproduct" without also being an intentional part of the process feed-stock seems unlikely.

On the other hand, if such material were truly only/purely a byproduct (i.e. and not part of the feed-stock), and under the jurisdiction of the Act, then it is certain it did not originate in the DRC and must, therefore, be conflict free.

Question # 22

Question – "Should we require issuers to provide the conflict minerals disclosure and reporting requirements mandated under Section 13(p) in its Exchange Act annual report, as proposed? Should we require, or permit, the conflict minerals disclosure to be included in a new, separate form furnished annually on EDGAR, rather than adding it to Form 10-K, Form 20-F, and Form 40-F? Would requiring issuers to disclose the information in a separate annual report be consistent with Section 13(p)? Should we develop a separate annual report to be filed on EDGAR that includes all of the specialized disclosures mandated by the Dodd-Frank Act? What would be the benefits or burdens of such a form for investors or issuers with necessary conflict minerals?"

Answer – We do not believe the annual report on Form 10-K should be mandated for conflict minerals disclosure and reporting, primarily because this subject matter is both very specialized and substantially different from the financial and related information that investors expect in the annual report. In addition, issuers will be required to implement significantly different processes to comply with the new reporting requirement that are outside the scope of processes developed for regular periodic financial reporting, which would impose a substantial burden on regular year-end reporting. Rather, we believe a new, separate form that is furnished, rather than filed, with the Commission would be more appropriate or, alternatively, Form 8-K could be amended to add a new item designated for the furnishing of conflict minerals disclosure within a reasonable time period after fiscal year end (e.g., within 120 days). The information should be "furnished," rather than "filed," in a manner similar to specified in Form 8-K, General Instructions B(2), for Items 2.02 and 7.01. A form separate from the annual report will enable interested parties to more readily locate this information and will enable issuers to better plan and allocate resources for this disclosure. Disclosure in a separate report is consistent with Section 13(p), which specifies the timing for disclosure (annually), but not the type of form, which is left to the Commission's regulatory discretion.

Question # 23

Question – “Should we require some brief disclosure in the body of the annual report, as proposed?”

Answer – For the reasons discussed in Question # 22 above, we do not believe disclosure regarding conflict minerals in the annual report is appropriate. However, if disclosure is in a separate form or Form 8-K, we believe a brief statement or summary in the body of the report may be helpful or, alternatively, all information could be set forth in an exhibit furnished with the report.

Question # 24

Question – “Should our rules provide that, rather than be included in the body of the annual report, all required information would be set forth in the Conflict Minerals Report that would be furnished as an exhibit to the annual report?”

Answer – For the reasons discussed in Question # 22 above, we do not believe disclosure regarding conflict minerals in the annual report is appropriate. However, if disclosure is in a separate form or Form 8-K, we believe a brief statement or summary in the body of the report may be helpful or, alternatively, all information could be set forth in an exhibit furnished with the report.

Question # 25

Question – “Instead, should all required information, including the Conflict Minerals Report, be included in the body of the annual report?”

Answer – For the reasons discussed in Question # 22 above, we do not believe disclosure regarding conflict minerals in the annual report is appropriate.

Question # 26

Question – “Should issuers with necessary conflict minerals that did not originate in the DRC countries be required to disclose any information other than as proposed? For example, should we require such an issuer to disclose the countries from which its conflict minerals originated?”

Answer – We do not believe issuers with necessary conflict minerals that do not originate in the DRC countries should be required to disclose any information other than as proposed as that would go beyond the scope of Section 13(p).

Question # 27

Question – “Should we, as proposed, require issuers to describe the reasonable country of origin inquiry they used in making their determination that their conflict minerals did not originate in the DRC countries? Is a separately captioned section in the body of the annual report the appropriate place for this disclosure?”

Answer – Section 13(p) does not appear to require issuers to describe the reasonable inquiry made if they determine that conflict minerals did not originate in DRC countries. If the Commission determines that such information should be provided, we believe it should be in a report that is separate from the annual report and that may be furnished, rather than filed, with the Commission.

Question # 28

Question – "Should we require, as proposed, that an issuer maintain reviewable business records if it determines that its conflict minerals did not originate in the DRC countries? Are there other means of verifying an issuer's determination that its minerals did not originate in the DRC countries? Should we specify for how long issuers would be required to maintain these records? For example, should we require issuers to maintain records for one year, five years, 10 years, or another period of time?"

Answer – We do not believe it is appropriate to implement a new regulatory requirement that issuers maintain reviewable business records. If such a requirement is imposed, we believe it should specify that such records must be retained for not more than three years and are reviewable by the Commission pursuant to current investigatory procedures only.

Question # 29

Question – "Should we require the disclosure in an issuer's annual report to be provided in an interactive data format? Why or why not? Would investors find interactive data to be a useful tool to easily find the information provided? If so, what format would be most appropriate for providing standardized data disclosure? For example, should the format be eXtensible Business Reporting Language (XBRL), as one letter recommended,82 or should the format be eXtensible Markup Language (XML)?"

Answer – As XBRL and XML are primarily intended for financial information, we do not believe conflict minerals disclosure should be required to be provided in interactive data format.

Question # 30

Question – "Should we require issuers to briefly disclose in the body of their annual reports the contents of the Conflict Minerals Report? If so, how much of the information in the Conflict Minerals Report should we require issuers to disclose?"

Answer – For the reasons discussed in 22 above, we do not believe disclosure regarding conflict minerals in the annual report is appropriate.

Question # 31

Question – "Should we require an issuer to post its audit report on its Internet website, as proposed?"

Answer – We agree it would be appropriate and consistent with Section 13(p) to require posting of the most recent audit report on an issuer's website for a specified period of at least 30 days.

Question # 32

Question – "Should we require, as proposed, that an issuer post its Conflict Minerals Report and its audit report on its Internet website at least until it files its subsequent annual report? If not, how long should an issuer keep this information posted on its Internet website?"

Answer – We agree it would be appropriate and consistent with Section 13(p) to require posting of the most recent Conflict Minerals Report on an issuer's website for a specified period of at least 30 days.

Question # 33

Question – "Is a reasonable country of origin inquiry standard an appropriate standard for determining whether an issuer's conflict minerals originated in the DRC countries for purposes of our rules implementing the Conflict Minerals Provision? If not, what other standard would be appropriate? Rather than requiring a reasonable country of origin inquiry as proposed, should our rules mandate that the standard for making the supply chain determinations, as set forth in Exchange Act Sections 13(p)(1)(A)(i) and (ii) (and described below), also applies to the determination as to whether an issuer's conflict minerals originated in the DRC countries? Should we provide additional guidance about what would constitute a reasonable country of origin inquiry in determining whether conflict minerals originated in the DRC countries?"

Answer – Additional Guidance should be included as to what constitutes a "reasonable country of origin inquiry".

A "reasonable country of origin inquiry" would be a requirement in company contract Terms and Conditions that requires direct suppliers to notify the purchaser of the country of origin any tin, tantalum, tungsten or gold within products for which the purchaser explicitly specified the metals (or parent minerals) be included, and for it to pass this same requirement to their suppliers should be sufficient. If the direct supplier responds that it cannot determine the country of origin, no further action on the part of the purchaser should be necessary.

Question # 35

Question – "Should issuers be able to rely on reasonably reliable representations from their processing facilities, either directly or indirectly through their suppliers, to satisfy the reasonable country of origin inquiry standard? If so, should we provide additional guidance regarding what would constitute reasonably reliable representations and what type of guidance should we provide? If not, what would be a more appropriate requirement?"

Answer – Yes, issuers should be allowed to rely on reasonably reliable representations from their direct suppliers. Reasonably reliable should be based on contract terms and conditions, prior experience with the supplier and perceived risk that the supplier will or will not comply with the contract conditions.

Question # 38

Question – "Should our rules, as proposed, permit issuers to describe their products that contain conflict minerals that do not qualify as being DRC conflict free or that may not qualify as being DRC conflict free based on their individual facts and circumstances? If not, how should we require issuers to describe their products that contain conflict minerals that do not qualify as being DRC conflict free? If an issuer had hundreds or thousands of products that were not DRC conflict free, would the report provide overwhelming information? Would it be unduly expensive to produce?"

Answer – Descriptions of products should allow broad characterizations of the type of products, for example semiconductor manufacturing equipment and associated spare and replacement parts.

Question # 39

Question – "Should our rules, as proposed, require issuers to disclose the facilities, countries of origin, and efforts to find the mine or location of origin only for its conflict minerals that do not qualify as DRC conflict free, and not for all of its conflict minerals? Alternatively, should we require issuers to disclose the facilities, countries of origin, and efforts to find the mine or location of origin for all of its conflict minerals regardless of whether those conflict minerals do not qualify as DRC conflict free?"

Answer – Efforts to determine the source mine should not be required past the smelter or other ore processing facility. EICC and GESI are forming collaboratives (Conflict Free Smelter Review Committee Program) that are developing smelter reports that can be commonly used by all actors downstream in the supply chain.

Question # 52

Question – "Should our rules state that an issuer is permitted to rely on the reasonable representations of its smelters or any other actor in the supply chain, provided there is a reasonable basis to believe the representations of the smelters or other parties?"

Answer – Yes.

Question # 54

Question – "Should our rules prescribe any particular due diligence standards or guidance?"

Answer – Yes, those proposed by National Association of Manufacturers or OECD in previous comments should be used.

Question # 56

Question – "Should our rules, as proposed, require that a complete fiscal year begin and end before issuers are required to provide their initial disclosure or Conflict Minerals Report regarding their conflict minerals?"

Answer – Yes, systems need to be put in place during the interim so that the report can accurately reflect activity for the full fiscal year.

Question # 61

Question – "We note it is possible issuers may have stockpiles of existing conflict minerals that they previously obtained. Do we adequately address issuers' disclosure and reporting obligations regarding their existing stockpiles of conflict minerals? If not, how can we address existing stockpiles of conflict minerals? Should our rules permit a transition period so that issuers would not have to provide any conflict minerals disclosure or report regarding any conflict mineral extracted before the date on which our rules are adopted? Alternatively, would the reasonable country of origin inquiry standard for determining the origin of the conflict minerals and the due diligence standard or guidance for determining the source and chain of custody of the conflict minerals that originated in the DRC countries accomplish the same goal? For example, should issuers be required to inquire about the origin of their conflict minerals extracted before the date on which our rules are adopted? As another example, should issuers file a Conflict Minerals Report regarding conflict minerals that originated in the DRC countries before the date on which our rules are adopted?"

Answer – Yes, the rules should include a reasonable transition period.

Most importantly, there should be no requirements for issuers to determine the status of conflict minerals for which issuers take possession of prior to the first full fiscal year following adoption of the regulations.

Consideration should also be given to the fact that there may be materials in an issuer's supply chain that have been manufactured prior to the beginning of the issuer's first reporting year. Such materials should be deemed out of scope.

Question # 62

Question – "Should there be a de minimis threshold …? If so, what would be a proper threshold amount?"

Answer – There should be a de minimis threshold, but the value used for a de minimis threshold would depend on how the phrase "necessary to the functionality or production of a product" in delineated.

Further Commentary – If, for example, our proposal (given in detail) in Question # 16 is adopted (whereby the meaning of the phrase is limited to materials explicitly and intentionally added, or caused it to be added to the product), then the de minimis threshold could be very low (e.g. 1 g per year of "necessary" minerals). This is because there is essentially no "use" discovery the issuer must undertake. If they are explicitly and intentionally adding or specifying the addition of a potential conflict mineral derivative in their product, they can relatively quickly, and with a good level of certainty, identify the locations and amounts of the materials in the product structure (e.g. bill of materials).

However, if a more conservative meaning is assigned to "necessary" such that an issuer is responsible even for the materials they do not explicitly and intentionally add or specify, then a higher de minimis should be adopted as the issuer would be responsible for discovering materials he does not necessarily know are there. In such a case a much higher threshold would be recommend and even a threshold based on a different denominator such as 0.1% of the weight of any particular component acquired as a whole by the issuer. It part, a higher de minimus threshold would allow the issuer to make some basic estimates about the content of some sub-components rather than being burdened with proving exact details.

Question # 63 (Part 1 of 2)

Question – *"Should our rules, as proposed, include an alternative approach for conflict minerals from recycled or scrap sources as proposed?"*

Answer – **Yes**, but further consideration is needed in the rules for recycled / refurbished **products**.

Further Commentary – The topic of recycled materials includes not only the possibility of conflict mineral derivative metals being extracted from waste or recycle streams and re-constituted as new "feed-stock" (e.g. ingots of material), but also the possibility of refurbishing complete products to as built (or newer) condition for resale. These two scenarios can be called the recycled feed-stock and the recycled product scenarios, respectively.

Many potential issuers have a full or partial business income based on recycling old products of their own design and manufacture, or designed and manufactured by other companies. These products could easily contain potential conflict mineral derivatives, but determining the source of these derivatives could be a practical impossibility for the following reasons.

It is impossible to determine by gross inspection alone what the constituent components of the recycled products are made from.

It would be destructive to the product to use chemical tests, and pragmatically impossible to use non-destructive tests, to do a detailed inspection of the constituent components.

The original manufacturer of the constituent components would not typically be marked on the component.

Even if a component manufacturer were identifiable from an explicit name or a logo on a component, they might not be in business any longer.

Even if a component manufacturer were still in business, there would be little to no economic incentive (other than good will) for them to dig up data about their old components - they were enriched by the original sale of the component, but not the re-sale in the recycled product.

Even if a component manufacturer were willing to help research their old components, it is quite possible they would no longer still have useful data on record.

Even if the equipment was originally manufactured by the same company that is refurbishing it, they might not have a reason to have retained records about the constituent components.

Question # 63 (Part 2 of 2)

Question – *"… should that approach permit issuers with necessary conflict minerals to classify those minerals as DRC conflict free…"*

Answer – **No.** With consideration for the recycled feed-stock scenario (Reference Question # 63 Part 1), this allowance seems to provide a loop-hole that could easily be exploited to avoid responsibility. It is probably moot for the recycled product scenario.

Further Commentary – As suggested, the recycled feed-stock scenario should probably receive more scrutiny, but for the recycled product scenario, it is unlikely that any purchaser of used or waste equipment with a view to refurbishing it for resale would ever include an intentional and explicit statement about conflict minerals in the contract used to acquire the used or waste product, and thus none of the possible conflict minerals contained in a recycled product would every qualify as "necessary" (per our proposal given in Question # 16).

Question – "Should we require, … a certified independent private sector audit, disclosing that their conflict minerals are from these sources? If not, why not?"

Answer – **Yes**, but only where "necessary" is understood in the context of "necessary to the functionality or productions of a product" and with consideration to our proposal for the meaning of this phrase given in Question # 16.

Question # 64

Question – "Instead, ... undertake reasonable inquiry to determine they are recycled or scrapped …?"

Answer – No.

Question # 65

{Note: we have not commented on several of the beginning questions}

Question – *"Should our rules define what constitutes recycled or scrap conflict minerals?"*

Answer – Yes.

Question – *"If so, what would be an appropriate definition?"*

Answer – We suggest a definition to the effect of ;

"A recycled or scrap conflict mineral is a conflict mineral or a conflict mineral derivative that is within, or has been reclaimed from, a used product that was collected directly from the last product end user, or that was collected from a municipal waste stream.

A "used product" is a product that, prior to recycling or disposal, is commercially sold or otherwise distributed to a buyer not in the commercial chain of distribution and used for some period of time."

{Note: The "used product" definition portion is derived from a definition given in Restatement of the Law, Third, Torts: Products Liability Copyright (c) 1998, The American Law Institute, chapter 1, section 8}

Further Commentary – It is very important, as laid out in Question # 63 Part 1 of 2, that the possibility of full products being recycled be addressed with the recycling concepts and so "that is within, or has been reclaimed from, a used product" is essential in the above proposal.

Question # 66

Question – *"Should this treatment …apply to all conflict minerals, as proposed?"*

Answer – Yes, it should apply to all conflict minerals.

Further Commentary – Recycling, in general, is a cornerstone of sustainability, and to the extent these rules related to recycled materials are less burdensome than those applied to new materials, the recycling rules should be afforded to all the conflict minerals and their derivatives.

For example, from the recycled feed-stock perspective, gold is only recycled with such vigor because of its value. As other potential conflict mineral derivatives gain commercial value, the economic pressure to recycle will increase.

From the recycled product perspective, any recycled electronic product could contain any of the conflict mineral derivatives, it would be very confusing to have some rules for gold, and different rules for the other metals within the same product that is being recycled (i.e. refurbished for re-use).

Question # 67

Question – "*Is our alternative approach to recycled and scrap minerals appropriate?"*

Answer – Yes.

Question – "*Is there a significant risk that conflict minerals that are not "DRC conflict free" may be inappropriately processed and "recycled" so as to take advantage of this alternate approach?"*

Answer – This is a very subjective question, but we do not think there is significant risk.

Further Commentary – It seems clear that for "honest" recycled potential conflict minerals and derivatives, and recycled products containing those minerals and derivatives, there would be no practical way to obtain sourcing information, and so without special dispensation, they would be doomed for burial in a land fill until mined anew under a different authority having jurisdiction. This would be a clear waste of material that at least cannot contribute to new suffering in the DRC even though its disposition regarding past suffering may not be clear.

Yes it is possible that dishonest people may find a way to pass new material off as recycled, but there would be a basis in these rules both to look for such abuse and to prosecute it if found.

The possibility of undetected or unprosecuted abuse of recycling rules does not outweigh the very obvious benefit of using recycled products and materials.

Further, it is not at all clear the possibility of abuse of the rules related to recycled materials is any different than the possibility of abuse of the rules related to new materials. In this sense, the playing field remains level as regards "significant risk" of dishonest behavior.

Please list other questions / items that you would like to see addressed.

In the rule set, when the origin of these minerals is unknown, it could be more effective if they were referred to as “suspect conflict minerals” and the derivatives as “suspect conflict mineral derivatives”, or some similar phrasing. The materials should only be referred to as “conflict minerals” or “conflict mineral derivatives” if the origin has been determined to be from a mine that enriched armed forces in the DRC (and only the DRC – or some additional but specific surrounding countries). A “suspect conflict mineral” or a” conflict mineral” should only be attributed to being contained in a product if it is indeed anticipated in the mineral form, otherwise the term “suspect conflict mineral derivative” or “conflict mineral derivative” should be used.

The precedent of nomenclature laid out in the Act and in the proposed rules can result in some unfortunate, and semantically tangled, statements such as “None of the conflict minerals in the product originated from the DRC, so it can be declared conflict free.” Using the term “conflict mineral” to described minerals known to originate elsewhere (or originate from mines that did not contribute to DRC armed forces) is very confusing. While experts in this legislation may be able to distinguish meanings based on context, lay personnel, upon which the success of this effort ultimately depends, will not be able to make sense of it. It would be helpful to adopt terminology (such as suggested above) that unambiguously differentiates the minerals and derivatives properly determined to be “conflict related” from those for which that state is undetermined.

Finally, it is also semantically awkward to suggest a product would contain a conflict mineral (i.e. rather than a conflict mineral derivative). Generally speaking (and as defined in several sources) a mineral is a material as found in the natural environment. Even gold the mineral (e.g. gold “ore”) is significantly different from the gold used in jewelry and such. It would only be on the rarest of occasions that a product would contain a conflict “mineral” per se. Instead they would be expected to contain a conflict mineral derivative (or a suspect conflict mineral derivative). While this semantic issue might not be as troublesome as the previous, it would be good to have the SEC rules promote technical accuracy in this regard as the rules and supporting guidance, etc… will, no doubt, be the first exposure many issuers have to these concepts.