Information Technology Industry Council
Leading Policy for the Innovation Economy

February 24, 2011

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Attention: Ms. Elizabeth M. Murphy, Secretary

Re: Release No. 34-63547 (Dec. 15, 2010); File Number S7-40-10

(Submitted via email: rule-comments@sec.gov)

Ladies and Gentlemen:

This letter is submitted on behalf of the Information Technology Industry Council (ITI), the premier voice, advocate, and thought leader for the information and communications technology industry. We are responding to Release No. 34-63547, dated December 15, 2010 (the Release), which proposes rules (the Proposed Rules) to implement Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). That provision added a new Section 13(p) to the Securities Exchange Act of 1934 (the Exchange Act) pertaining to disclosures about certain "conflict minerals" originating in the Democratic Republic of the Congo (DRC) or adjoining countries.

We appreciate the efforts of the Securities and Exchange Commission (the Commission) to address the recommendations expressed previously by ITI in our November 2010 submission. ITI and our members support, with some qualifications noted below, the overall approach advanced in the Proposed Rules. In this regard, as we explain in Section I below, we particularly believe the Commission's proposals, and related guidance in the Release, regarding the "reasonable country of origin inquiry" and related due diligence, should provide companies with reasonable principles with which to comply with the new disclosure obligation. Sections II-VII of our letter provide a number of comments addressing specific aspects of the Proposed Rules as well as some suggestions to ease their implementation that could help reduce the burdens that the rule will impose on our companies.

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We present our comments and recommendations regarding the Proposed Rules in the following sections:

I. Overall Comments on the Proposed Approach to Reasonable Country of Origin Inquiry and Due Diligence

The Proposed Rules call for a "reasonable country of origin inquiry" to determine whether a company's conflict minerals originated in the DRC or adjoining countries. Where conflict minerals did originate in the DRC or adjoining countries, or where a company is unable to determine that such minerals did not originate there, the company would be required to furnish a report describing the measures taken by the company to exercise due diligence on the source and chain of custody of the conflict minerals. The Proposed Rules do not, however, specify or define particular actions or steps that would constitute either the reasonable country of origin inquiry or the due diligence process.

We understand that in this approach the Commission is recognizing, appropriately, that no one set of standards will suit all companies or all contexts and that, instead, each company would have the discretion under the Proposed Rules to make a judgment, based on its particular facts and circumstances, regarding the appropriate steps to fulfill its obligations under the new disclosure regime required by the Dodd-Frank Act. Because these minerals and their

derivatives are widely used throughout the global economy, and because each company will have its own distinct supply chains, sourcing practices and business relationships, issuers should have the flexibility to rely on different due diligence measures that reflect the unique characteristics of the supply chain for each mineral. We strongly support this approach and request the Commission affirm it in the adopting release for the final rules.

To this end, we concur in the particular guidance set forth in the Release to the following effects:

- The reasonable country of origin inquiry is not meant to require a company to make the determination about the country of origin of conflict minerals with absolute certainty, because a reasonableness standard is not the same as an absolute standard;

- The steps necessary to make the reasonable country of origin inquiry will evolve over time and will depend on the available infrastructure at any point in time;

- Presently, one way to satisfy the reasonable country of origin inquiry is to receive reasonably reliable representations from the facility at which the conflict minerals were processed that the minerals did not originate in the DRC countries; these representations could come directly from the facility or indirectly through the company's suppliers, as long as the company reasonably believes the representations to be true based on the facts and circumstances;

- More specifically, one way that a company could reasonably rely on a facility's representations regarding the source of its conflict minerals is if the smelter is identified as one that processes only "DRC conflict free" minerals under recognized national or international standards after receiving an independent third party audit of the source and chain of custody of the conflict minerals it processes;

- With respect to the required due diligence process, one way that a company could provide evidence that the company used due diligence in making its supply chain determinations would be to perform its due diligence in conformity with a nationally or internationally recognized set of standards of, or guidance for, due diligence regarding conflict minerals supply chains; and,

- Although the rules do not require issuers to use an industry-wide due diligence process to comply with their due diligence obligations, the Commission recognizes that most affected issuers will rely on industry wide due diligence processes as part of their overall compliance.

Particularly with respect to due diligence, ITI agrees with the Commission that it is not appropriate "to prescribe any particular guidance for conducting due diligence because the conduct undertaken by a reasonably prudent person may vary and evolve over time." Given this principle and in light of the guidance provided by the Commission in the Release, we believe that the Proposed Rules should be read as permitting a company's due diligence procedures to be commensurate with its position in the supply chain and fulfilled by (a) acting alone or in concert with others; (b) relying on conflict minerals due diligence guidance published by the Organization for Economic Cooperation and Development ("OECD"), United Nations Group of Experts, shared industry processes, or other nationally or internationally recognized standards or guidance relating to supply chain due diligence; or (c) following separate, yet appropriate, paths.

While we concur in the Commission's guidance set forth in the Release as described above, ITI believes it would be appropriate for the Commission to provide additional guidance to help issuers as they undertake their efforts to implement plans for complying with the new rules. Specifically, we request that the Commission provide additional guidance as follows:

- State specifically that additional means to provide evidence of due diligence might include diligence in conformity with shared industry processes and standards;

- A reasonable inquiry may differentiate among suppliers, with more rigorous processes for suppliers that contribute substantial amounts of conflict minerals to the issuer, and less rigorous processes for less significant suppliers;

- Confirm that, as with the inquiry into country of origin, additional means to provide evidence of due diligence might include reliance on reasonably reliable third party representations[1];

- Confirm that reasonably reliable third party representations could include previously-delivered supplier declarations, provided that such supplier declarations are required to be updated upon the occurrence of a material change affecting such suppliers' sourcing of conflict minerals[2]; and

- Confirm that, to the extent an issuer furnishes a Conflict Minerals Report describing the due diligence exercised, it is permissible for the scope of

[1] We note that this is a critical component of industry initiatives such as the Conflict-Free Smelter program described in our November 18, 2010, comments to the Commission and incorporated herein by reference.

[2] We believe this guidance is essential to prevent a potentially unlimited declaration burden on companies in the electronics supply chain, given that fiscal years are staggered throughout the calendar year.

the independent private sector audit to be limited to an assessment of whether the issuer's report accurately describes the due diligence the issuer exercised.

As noted in the Release, a reasonable country of origin inquiry does not require 100 percent accuracy, and we believe the same principle applies to effective due diligence. To reflect this reality, and in light of the very real challenges posed by complex and changing global supply chains, we believe issuers should be held to a "reasonable care" standard in executing a reasonable country of origin inquiry and effecting due diligence. While we do not necessarily expect the Commission to articulate the contours of a reasonable care standard, we do think it would be helpful for the Commission to provide examples of actions that would be deemed consistent with a reasonable care standard, including some of the specific actions noted above.

In addition, we think it would be useful if the Commission would list additional examples of national or international organizations (such as the OECD guidance, which the Release mentions) or governmental agencies that have developed due diligence standards or guidance the Commission believes issuers may follow in order to conduct an appropriate due diligence inquiry, although issuers should not be required to use an approach from such list.

We would ask the Commission to codify the guidance summarized above, together with the Commission's guidance in the Release, in the final rules or their instructions or notes, or as part of a more formal "safe harbor." We believe this would provide companies with clearer and firmer direction as they plan the steps necessary to comply with the new rules.

II. Conflict Minerals

The Release notes that cassiterite is the metal ore that is most commonly used to produce tin; that columbite-tantalite is the metal ore from which tantalum is extracted; that gold is used for making jewelry; and finally that wolframite is the metal ore that is used to produce tungsten. ITI members do not source raw mineral ore. For the most part, they source components containing refined metals derived from mineral ore. We understand from the discussion in the Release that tin, tantalum, gold and tungsten are the only derivates of cassiterite, columbite-tantalite, gold, wolframite covered by the provision.

III. Determining Issuers Covered by the Conflict Minerals Provision

A. Applicability

ITI and our members believe that the requirements of Section 1502 should be applied broadly to companies that file reports under the Exchange Act and for which these minerals and their derivatives are necessary to the functionality of

the product manufactured or contracted to be manufactured by the company. Global supply chains are complex and inter-related; in many instances, a given issuer may simultaneously be a supplier to and customer of numerous other issuers. If certain companies are excluded from the requirements, even temporarily, this will compromise the ability of other issuers to obtain the information necessary to fulfill their disclosure obligations. Excluding certain companies from the requirements may also heighten the competitive disadvantages that may be incurred by those issuers - primarily U.S. companies - that must comply.

Moreover, the most efficient and effective way to satisfy the requirements of Section 1502 is through common and concerted effort. All entities have a role to play in developing and implementing processes that drive transparency and should be required to report on their actions in this regard. The high tech sector has already demonstrated the effectiveness of shared effort through our Conflict-Free Smelter program. The final rules should be applied broadly to ensure that as many actors as possible have an incentive to participate in and drive the successful implementation of common supply chain transparency initiatives.

B. When Conflict Minerals Are "Necessary" to a Product

1. Unintentionally Included or Naturally Occurring Minerals

   ITI supports the Commission's proposal to refrain from defining when a conflict mineral is necessary to the functionality or production of a product except to clarify that, as proposed by the Commission, the final rules should expressly exclude any products that contain unintentionally included or naturally occurring trace amount of conflict minerals. No metal product is pure, and the unintended inclusion of trace amounts of conflict minerals in other metals can and likely will occur. Issuers should not be responsible for identifying and tracking such trace amounts.

2. Necessary for Production

   We further support the Commission's statement in the Release that, "conflict minerals necessary to the functionality or production of a physical tool or machine used to produce a product would not be considered necessary to the production of the product even if that tool or machine is necessary to producing the product. For example, if an automobile containing no conflict minerals is produced using a wrench that contains conflict minerals necessary to the functionality or production of that wrench, we would not consider the conflict minerals in that wrench necessary to the production of the automobile." The level of guidance in the Release provides issuers with sufficient guidance on this point and no further definitions are necessary.

3. Research & Development Uses

We suggest that the rule recognize that conflict minerals and their derivatives used for research and development and related purposes are not considered to be products manufactured or contracted to be manufactured for the purposes of this provision. This would include materials, prototypes and other demonstration devices not intended to be sold into commerce. We believe that the requirements should apply to products manufactured or contracted to be manufactured that are intended for sale. The Commission may also want to extend this approach to components that are provided on a business-to-business basis at cost and that are to be used solely for testing and engineering purposes and not for inclusion in a product that is subsequently sold into commerce.

IV. Location and Furnishing of Disclosure and Conflict Minerals Report

For the reasons discussed below, ITI and its members do not believe that the conflict minerals disclosure and related conflict minerals report mandated by Section 13(p) should be included in an issuer's annual report on Form 10-K, as proposed, or in a new, separate form. Further, we do not believe Section 13(p) requires any information other than the actual Conflict Minerals Report to be submitted to the Commission. Accordingly, in light of the discrete and distinct nature of this disclosure and consistent with the statutory language, we recommend that the Commission's final rules require only website disclosure about the outcome of an issuer's reasonable country of origin inquiry and that the Conflict Minerals Report, if required, be furnished to the Commission on a current report on Form 8-K.

Under our suggested approach, an issuer would be required to disclose annually on its website, within a specified time frame after the end of its fiscal year (such as 120 days), whether conflict minerals necessary to the functionality or production of products manufactured by such issuer did or did not originate in the DRC or an adjoining country, or that the issuer is unable to make such determination. If an issuer determines that conflict minerals necessary to the functionality or production of such issuer's products did originate in any such country, then the issuer would be required to publish on its website and furnish to the Commission a Conflict Minerals Report and other information prescribed by Section 13(p) on a current report on Form 8-K under a new Item established for that purpose. When required, disclosure of the Conflict Minerals Report on the issuer's website and by means of the Form 8-K should be provided on an annual basis within a reasonable time (such as 120 days) after the end of the issuer's fiscal year.[3]

[3] To the extent applicable, foreign private issuers should similarly be required to submit their conflict minerals report annually on a Form 6-K.

In support of our recommended approach, we note that while Section 13(p)(1)(A) states that covered persons must “disclose annually” whether conflict minerals used “did originate” in the DRC or an adjoining country, the only information expressly required to be submitted to the Commission is a Conflict Minerals Report “in cases in which such conflict minerals did originate in any such country.” Further, Section 13(p)(1)(E) requires that a person required to submit a Conflict Minerals Report shall also post the information on its website.

If the Commission does not adopt the bifurcated approach we recommend above, then we recommend that all of the required conflict minerals disclosures, not just the Conflict Minerals Report, be required to be furnished to the Commission by means of a current report on Form 8-K, instead of by means of the annual report on Form 10-K as proposed by the Commission.

In our view, Form 8-K, rather than Form 10-K, is the more appropriate means for the Conflict Minerals Report for a number of reasons, as outlined below.

- Section 13(p) does not specify that Form 10-K must be used for this report (as opposed to, for example, disclosures related to executive compensation and certain board matters that the Dodd-Frank Act specifies be included in the annual proxy statement).

- The conflict minerals subject matter is specialized and very different from the financial and related information otherwise required to be included and which investors expect to find in the annual report.

- Issuers will be required to implement new processes to comply with the conflict minerals reporting requirements that are outside the scope of processes used for regular year-end financial reporting, and it would almost certainly impose a burden on issuers to complete the necessary inquiry and due diligence pertaining to conflict minerals on the same timetable as the Form 10-K.

- A failure to file a Form 10-K on a timely basis would prevent an issuer from being eligible to use certain "short form" registration statements under the Securities Act (e.g., Form S-3) and could lead to other adverse consequences, such as a negative perception by analysts and investors. These timing concerns would be reduced if the conflict minerals disclosure was submitted as part of a Form 8-K report with an annual deadline later than the Form 10-K filing deadline.

- We do not believe it is appropriate to make the Conflict Minerals Report and related disclosure subject to the Form 10-K certifications signed by the CEO and CFO as required by the Sarbanes-Oxley Act of 2002. These officer certification requirements were enacted in response to a number of major corporate and accounting scandals, and there is nothing in the

Dodd-Frank Act to suggest that Congress intended conflict minerals disclosure to be subject to the CEO/CFO officers' certification requirement.[4]

Further, we agree with the Commission's proposal that the Conflict Minerals Report should be "furnished" as opposed to "filed," an approach consistent with that specified in Form 8-K, General Instructions B(2) with respect to the disclosure required under existing Items 2.02 and 7.01. However, if the Commission does not adopt our recommended approach of requiring only website posting of the disclosure regarding the reasonable country of origin inquiry, we think it would be appropriate to permit issuers to furnish, instead of file, the entirety of the conflict minerals disclosures, not just the Conflict Minerals Report itself. This approach would be more easily facilitated if the conflict minerals disclosures were provided through an 8-K report.

Using Form 8-K as the vehicle for providing the Conflict Minerals Report would also allow the Commission to provide additional flexibility to issuers in light of the unique nature of the conflict minerals information and the circumstances giving rise to this new reporting requirement. For example, unlike Form 10-K, certain items in Form 8-K have the benefit of an instruction (General Instruction B(6)) stating that the 8-K report is not deemed an admission as to the materiality of the information included in the report.

Given the specialized, policy-oriented purposes underlying the conflict minerals disclosures, we urge the Commission to consider extending the benefit of this instruction to the conflict minerals disclosures. In addition, under current rules the delinquent filing of certain information on Form 8-K does not make an issuer ineligible to use the short-form registration statement for securities offerings (see General Instruction I(A)(3)(b) to Form S-3). We believe a similar instruction would be appropriate for the conflict minerals disclosures. Finally, a new item on Form 8-K designated for conflict minerals information would be readily distinguishable from other types of disclosures, making it more accessible for interested persons.

In conclusion, we agree with the Commission's proposal that the conflict minerals disclosures should be "furnished" rather than "filed," but urge that, instead of being submitted as part of the annual report on Form 10-K or in a new report, they should be submitted through a bifurcated disclosure approach as described above, with the Conflict Minerals Report being submitted as part of an annually-required Form 8-K due 120 days after fiscal year-end. Further, we request that these disclosures have the benefit of the existing instruction in Form 8-K that their inclusion is not an admission as to the materiality of the conflict minerals information and that a delinquent filing of a Form 8-K to report the conflict

[4] We note, moreover, that the Dodd-Frank Act requires the Conflict Minerals Report to include a "certified" independent private sector audit of such report.

minerals disclosure does not make the company ineligible to use a Form S-3 registration statement.

A. Audit Certification (Question 42)

We support the Commission's proposal that the requirement for an issuer to "certify the audit" be satisfied by the issuer's certification that it obtained such an audit. We believe this is an appropriate and manageable standard for such certification.

B. Interactive Data Format (Question 29)

We are opposed to any requirement to provide required disclosure in an interactive data format. The type of data and information provided is not of a financial nature and there is no real benefit from having searchable information, particularly given the cost of converting the data to a searchable format. This would add to the cost and regulatory burden and would further disadvantage issuers relative to many of their competitors.

C. Disclosure of Content of Conflict Minerals Report in Body of Annual Report (Questions 25 and 30)

As noted above, we do not believe the annual report on Form 10-K is the appropriate means of providing the annual conflict minerals disclosures and related report, and we instead recommend that such information be furnished by means of a current report on Form 8-K.

If, however, the Commission adopts a rule requiring the inclusion of the conflict minerals disclosure and the Conflict Minerals Report as part of the annual report on Form 10-K, as proposed, we do not believe it would be appropriate or useful to investors to require issuers to briefly disclose in the body of their annual reports the contents of the Conflict Minerals Report. Given the distinct and discrete nature of the subject matter of such report, we believe it is appropriate to have such information in one place (the Conflict Minerals Report) and that such report should be a stand-alone document. In addition, the benefit of furnishing such report instead of filing it could be significantly compromised if the content of the report were required to be duplicated in the body of the Form 10-K.

D. Posting of Audit Report on Website (Question 31)

In our view, there is nothing in Section 13(p) requiring that the third party audit report be posted on an issuer's website, as the Commission has proposed. The Conflict Minerals Report would be posted on the issuer's website, and as long as the Conflict Minerals Report describes the third party audit, we do not believe there would be any added benefit achieved by posting the audit report on the

issuer's website. We therefore recommend that the Commission eliminate this aspect from the Proposed Rules.

E. Disclosure of Information Regarding Sourcing of DRC Conflict Free Minerals (Question 39)

We do not believe the Commission's rules should require issuers that use conflict minerals to make any disclosures regarding their activities beyond the disclosures called for by the Proposed Rules. Specifically, we do not believe it is appropriate or necessary for issuers to disclose the facilities, countries of origin, and efforts to find the mine or location of origin for conflict minerals that are DRC conflict free. Requiring issuers to disclose additional information about their conflict minerals, beyond that proposed, would exceed the statutory requirements, could jeopardize confidential business information, and could increase regulatory burdens on issuers, without advancing the objectives of the legislation.

V. Content of Conflict Minerals Report

The Proposed Rules lack clarity regarding the nature and extent of the disclosure that would be required within the Conflict Minerals Report. Furthermore, it is not clear how to determine the scope of the associated independent private sector audit of the Conflict Minerals Report. For example, one interpretation is that an issuer would generically describe its due diligence efforts associated with purchasing conflict minerals in its Conflict Minerals Report and engage an independent private sector auditor in an attestation engagement over the accuracy of its description in the report. Another interpretation is that the issuer would describe specifics about purchase contracts associated with particular conflict minerals, and engage an independent private sector auditor in an attestation engagement over such contracts and suppliers. We observe that the Release estimates an average cost of $25,000 per independent private sector audit. The average cost estimate seems to presume the first example, and we recommend that the final rules clarify the requirements as such.

In response to Question 37 in the Release, we do not think the approach in the Proposed Rules is appropriate. This approach is not consistent with the statute, which requires issuers making Conflict Minerals Reports to describe their products that are not DRC conflict free, not label them as such. Specifically, Section 1502(b) of the Dodd-Frank Act contains a provision that would allow a company to label a product as "DRC conflict free" if the product "does not contain conflict minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country."[5] Product labeling is not required in the statute, however, even for products that are "DRC conflict free". Indeed, the statute does not include any requirement that a company label

[5] Dodd-Frank Wall Street Reform and Consumer Protection Act § 1502(b) (amending Section 13 of the Securities Exchange Act of 1934).

any of its products. Also, please see the discussion below regarding our proposal for a phase-in of a temporary "indeterminate origin" classification for products that may not be "DRC conflict free".

We note also that the Federal Trade Commission generally has jurisdiction with respect to product labeling.

VI. Time Periods

A. Furnishing of the Initial Disclosure and Conflict Minerals Report

1. Proposed Phase-in of "DRC conflict free" Description

Issuers that use necessary conflict minerals and source from the DRC region (or cannot determine whether they did) must file a Conflict Minerals Report that includes:

> (ii) a description of the products manufactured or contracted to be manufactured that are not DRC conflict free ('DRC conflict free' is defined to mean the products that do not contain minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country), the entity that conducted the independent private sector audit in accordance with clause (i), the facilities used to process the conflict minerals, the country of origin of the conflict minerals, and the efforts to determine the mine or location of origin with the greatest possible specificity.

ITI would like to submit the following recommendation concerning a phased-in approach to product descriptions. We believe this proposal is consistent with and would uphold Congress's intent and approach under Section 1502.

> **Fiscal Years 1-3:** An issuer that files a compliant Conflict Minerals Report but is unable to determine the origin of the tantalum, tin, tungsten and gold in its products may list such products as "indeterminate origin".
>
> **Fiscal Year 4:** An issuer that must file a Conflict Minerals Report provides everything required in the statute, including a description of the products manufactured or contracted to be manufactured that are not DRC conflict free. The "indeterminate origin" classification is no longer available. To the extent that an issuer's findings are inconclusive, it would be required to identify such products as not "DRC conflict free".

As noted, the requirements of Section 1502 apply to a broad cross-section of the U.S. and global economy and impact virtually every manufacturing sector. Since Congress based the implementation timing on issuers' fiscal years, rather than on a common date, the actual timing of the initial disclosures will be staggered

across potentially thousands of companies. ITI members' supply chains are complex, global and inter-related; in many instances, a given issuer may simultaneously be a supplier to and customer of numerous other issuers. In practice, this will create massive challenges for the initial required disclosures throughout the worldwide electronics value chain, in particular for those issuers whose fiscal years are the first affected.

For example, and assuming that the Commission meets the statutory deadline to promulgate the final rules no later than April 15, 2011, issuers with fiscal years that commence on May 1 will be the first impacted. Numerous other issuers have fiscal years that coincide with the calendar year, meaning that there will be a significant lag between the required timing of these initial disclosures. Those companies that must disclose first may be unable to obtain required information from their suppliers and business partners whose disclosure obligations are months away, as the latter companies may just be commencing their inquiries.

An interim "indeterminate origin" category for indeterminate findings is also needed to avoid an unintended consequence that will otherwise result from the statute. In the early years of the requirements, while implementation systems are still maturing, it will be nearly impossible to certify the origin of the tantalum, tin, tungsten and gold in a complex product potentially comprised of thousands of components involving thousands of suppliers. Without this flexibility, it is a virtual certainty that most of the Conflict Minerals Reports filed will necessarily result in a default conclusion of "not conflict free." To avoid this designation from becoming meaningless, the SEC should establish an "indeterminate origin" category for a period of three years while implementation systems mature.

Accordingly, ITI proposes that the Commission allow issuers to temporarily use the "indeterminate origin" classification unless the issuer has actual knowledge that the products are not conflict-free. All other components of the Conflict Minerals Report would still be included in an SEC filing following an issuer's first fiscal year, as stated in the proposed rules.

This proposal is fully within the scope of the Commission's delegated authority under the statute. Although the statute mandates an annual disclosure of products that are "not DRC conflict free," the statute is silent on the treatment of products that contain conflict minerals whose sourcing the issuer does not know or is unable to determine. Instead of requiring that issuers who fall into this "unknown" category declare all their products "not DRC conflict free," it would be far preferable to allow such issuers to rely on the "indeterminate origin" classification for a limited and defined period of time.

B. Time Period in which Conflict Minerals Must be Disclosed or Reported

1. Possession

   We agree, as proposed, that "the date that the issuer takes possession of a conflict mineral would determine which reporting year an issuer would have to provide the required disclosure or Conflict Minerals Report for its conflict minerals." As detailed in the next section, however, there is a clear need for a transition period to address existing global stockpiles and inventories of conflict minerals and their derivatives, as well as products and components made from them.

2. Stockpiles/Existing Inventory

   Question 61 of the Release asks whether the rules should "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?"

   We believe that such a transition period is essential, given that the Commission's guidance on "possession" does not seem to adequately address the issue of stockpiles of existing conflict minerals or their derivatives in the marketplace. For the most part, issuers within the technology industry will not themselves possess stockpiles of these materials. Rather, significant stockpiles exist in the global marketplace, particularly at worldwide metals exchanges for tin and gold. The minerals from which these metals were derived were extracted long before supply chain transparency and due diligence infrastructure systems were instituted, and retroactive inquiries into the original country of origin of such stockpiled materials – or the finished or semi-finished products made from them – would not further the intent of the law. We recommend that the Commission require inquiry and disclosure requirements only for those conflict minerals extracted after a date certain. The Commission has suggested a date that corresponds with the adoption of the final rules. We suggest a later date, such as January 1, 2012, which would provide additional time to advance industry traceability systems for conflict minerals.

   This provides the most efficient introduction of the new rules by clearly establishing the need for a manufacturer to investigate the origin of all subsequently extracted material and allowing them the opportunity to focus on building the supply chain identification mechanisms necessary to provide adequate data for the first reporting cycle.

VII. Recycled and Scrap Minerals

We appreciate that the Commission recognizes that issuers will not know the origins of recycled or scrap metals that may be contained in the materials or components sourced and, further, that purchases of recycled or scrap resources would not implicate the concerns of the provision.[6] Accordingly, we believe the approach proposed by the Commission presents unnecessary compliance burdens and therefore urge the Commission to adopt a different approach for conflict minerals from recycled or scrap sources. Specifically, we recommend the alternate approach proposed in Question 64 of the Release: the final rules should "require issuers with recycled or scrapped conflict minerals to undertake reasonable inquiry to determine they are recycled or scrapped and to disclose the basis for their belief that their minerals are, in fact, from these sources."

We believe that recycled or reused sources should be subjected to a reasonable inquiry, but not the due diligence or Conflict Minerals Report requirements under the Proposed Rules, as we believe this alternative approach is sufficient to provide investors with adequate information for informed decision making. Under our proposal, an issuer would perform a reasonable inquiry to determine whether necessary conflict minerals in its products came from a recycled or reused origin. Material identified through this inquiry as being of recycled or reused origin would be considered to have originated outside of the DRC countries. The issuer would be required to disclose its determination that the conflict minerals are of recycled or scrap origin and the reasonable inquiry it used in reaching this conclusion, but would not be required to take any further action.

This alternate approach is consistent with the smelter audit protocol developed by the Electronic Industry Citizenship Coalition (EICC) and the Global eSustainability Initiative (GeSI). It is also consistent with the *OECD Due Diligence Guidance for responsible supply chains of minerals from conflict-affected and high-risk areas*," which clarifies that, "Metals reasonably assumed to be recycled are excluded from the scope of this Guidance."[7]

It is neither useful to investors nor consistent with the intent of the statute to require a Conflict Minerals Report for these minerals, even on the limited basis described in the Commission's proposed approach, since such a report would provide no further actionable information. The documentation of the reasonable inquiry will sufficiently describe the process used to reach the conclusion, just as it will for those conflict minerals that are identified as not originating in DRC countries.

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[6] The Proposed Rules acknowledge that, "given the difficulty of looking through the recycling or scrap process, we expect that issuers generally will not know the origins of their recycled or scrap conflict minerals…" (Release at page 63; 75 Fed. Reg. 80,948, 80,963 (Dec. 23, 2010)).

[7] See http://www.oecd.org/dataoecd/62/30/46740847.pdf at page 6, footnote 2.

Furthermore, global smelters process significant quantities of recycled or scrap metals in addition to raw ores, meaning that recycled content is ubiquitous in refined tantalum, tin, tungsten, gold and in the products containing these metals. Therefore, under the Commission's proposed approach to addressing recycled and scrap minerals, 100% of issuers subject to the provision would be required to furnish a Conflict Minerals Report – even issuers that can establish that they did not source from the DRC region. We note that the Commission assumes that under its current proposal only 20% of affected issuers would have to furnish an audited Conflict Minerals Report. More extensive reporting triggered by recycled material inputs in the smelting or refining process provides no further benefit and will simply make recycling a more costly and less desirable option at a time when advocates, agencies and manufacturers are encouraging the activity. Indeed, the recycling of metals, in addition to being a legitimate activity in itself, is one that ought to be encouraged because it leads to more efficient use of the world's resources.

ITI and our members appreciate the opportunity to submit our comments on this important matter, and we are available to provide any additional information the Commission might request.

Sincerely Yours,

Rick Goss
Vice President for Environment & Sustainability