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Metalor Technologies Americas

By e-mail to: rule-comments@sec.gov

The Honorable Mary L. Schapiro
Chairman
U.S. Securities and Exchange Commission

Re: Conflict Minerals – Proposed Rule (File Number S7-40-10)

Dear Chairman Shapiro,

Metalor Technologies USA is the largest refiner of United States scrap gold. We share the abhorrence of Congress at the violence in the Democratic Republic of Congo, and we have for years taken care to vet our sources of gold, with conflict as one among many considerations. We are concerned, however, that the proposed regulation will unnecessarily distort and impinge upon legitimate recycling activity, without benefit to its purpose and goal.

Congress has directed inquiry into all sources of gold, with particular attention upon DRC sources, and we support such inquiry. Our primary concern is that users of recycled gold – now proposed by the Commission to be required to prepare and submit an audited Conflict Minerals Report – should be placed upon an equal footing with users of mined gold. All users of gold should make the same reasonable inquiry to determine the origin of their gold. And in the case of recycled gold, that origin is not the original mine, but is the point at which a source material is initially submitted into the recycling supply chain: the point at which it is generated as scrap or the point at which it is discarded. The gold in that material was, at some time in the past, fully refined, sold and used, including use for investment, and no longer has any supply chain association with its mining origin. It cannot finance conflict in the DRC.

Gold is recycled from a wide variety of materials, virtually everything in which gold has been used, because of its extraordinary monetary value. Gold jewelry is an obvious source, recycled when it is no longer wanted as jewelry, and is the largest source of recycled gold. Manufacturing scrap from a number of industries, much of it also of high concentration, is recycled. And many other materials are also recycled for their gold content, even when that content is far less than gold jewelry, such as electronic circuit boards, jewelers' polishing rags, manufacturers' workbench and floor sweepings, spent cyanide plating solutions, furnace emission dusts, etc., etc. These materials, with gold concentrations that are low but higher than ore, are intensively recycled worldwide to reclaim their gold content.

Gold jewelry is typically purchased from individuals by pawn shops, jewelry stores, and "we buy gold" businesses. Occasionally a jewelry store will sell its inventory, or a manufacturer will sell a significant amount of unsold product, but individual post-consumer jewelry transactions are the primary source. Most of the businesses and transactions are small, and small collections are typically sold to and consolidated by intermediary gold collection businesses. These consolidated collections, perhaps hundreds of ounces, are melted by these intermediaries into homogenous batches, sampled and assayed, cast into ingots, and sold to refiners based upon weight and assay. Jewelry manufacturing

255 John L. Dietsch Boulevard
North Attleboro, Massachusetts 02763

T +1.508.699.8800
F +1.508.695.1603

www.metalor.com
info@metalor.com

scrap will follow the same paths. Although some jewelry manufacturers are sufficiently large to deal directly with refiners, most manufacturing scrap will be collected and consolidated by intermediaries in the same way as scrap jewelry pieces and sold to refiners, sometimes in the same batches. Lower grade materials such as rags, sweepings, etc. are collected from manufacturers of many types, homogenized, sampled and assayed by intermediary processors, and sold to copper smelters that have gold byproduct refining capabilities.

There are a number of processes that are then used to reclaim gold from recyclable materials. For example, residual gold contained in a spent plating solution can be electroplated out onto a cathode, from which it can be scraped off. Or gold might be precipitated from such a solution by addition of another substance, such as zinc, leaving a high concentration gold precipitate. Gold that is on the surfaces of objects, such as gold-plated jewelry or electronic connectors, can be stripped in a cyanide solution, and recovered in the ways described above. Electronic circuit boards are typically first added into a copper smelting process, and after the copper has been removed, the remaining residues are chemically processed for their higher concentrations of gold. This is essentially the same process as recovery of gold byproduct from some copper ores. Other substances that initially have relatively low gold concentrations, e.g., floor sweepings, are similarly processed through copper smelting and refining processes, and some smelter-refiners specialize in low gold materials. Gold in jewelry, already at a high concentration, may be further concentrated through addition of chlorine gas, which removes other metals as chlorides, and/or may be chemically processed in cyanide or a combination of hydrochloric and nitric acids (aqua regia). These recycling processes are similar, if not identical, to the processes used to refine mined gold after it has been beneficiated and smelted, and the same refineries may refine gold from mines as well as recyclable materials, using the same equipment and processes. Gold is an elemental metal; it does not change or deteriorate in any way by being recycled, even if that were to occur a thousand times. So the final product of gold recycling is "pure" gold, typically 99.99% pure from major formal refineries, just as is the refined product of gold mining.

These gold refining processes are carried out throughout the world. There are now 60 gold refineries in 26 countries that meet the standards of the London Bullion Market Association for reputation, reliability, consistency and guarantee, and these form the highest tier of gold refining. But there are also many more refineries that formally refine and produce high quality gold, albeit without the reputation and product certainty of the top tier. And there are perhaps thousands of informal operations in a third tier, located in every country, that produce a serviceable refined gold product. It is important to understand that many gold refining processes can be performed in very small operations, by individuals, informally, especially if their input material is of a relatively high concentration. Much of the essential metallurgy has been known and practiced for hundreds of years. While there are efficiencies of scale with large batches, very small amounts of gold can be refined in these informal refining operations. Refining through dissolution and precipitation of gold can be – and sometimes is – carried out in small vessels and containers on benches, without industrial infrastructure, by people with very limited knowledge of chemistry and metallurgy. The quality of the product of such very small operations, and especially of informal operations, will not be the highest. It will not meet the needs of electronics applications, or the demands of high quality jewelry, but it may be adequate for many other

applications, including informal trading and banking (the hwala system) and some jewelry applications. So unlike the smelting and production of most other DRC metals, the refining of DRC gold is not limited to a small number of high volume supply chain choke points.

DRC gold is part of this lowest tier. Gold is mined in the DRC illegally and informally, in small alluvial and open pit mines. The mining method is placer mining, essentially visual identification, followed by manual and/or simple mechanical separation and collection of small pieces of gold, such as "panning" for gold. This method has been practiced for centuries, and continues to be practiced in many countries from alluvial deposits. The product of placer mining is a collection of gold flakes or "dust" that will typically have a gold concentration greater than 90%. The amount of gold annually produced in the DRC has been knowledgeably estimated at 6.5 tonnes (BSR, Conflict Minerals and the Democratic Republic of Congo, May 2010), 8 tonnes (Philip Olden, Report to OECD, August 2010) and 10 tonnes (U.S. Geological Survey). In physical size, 10 tonnes of gold occupies one half of one cubic meter, so in small batches, as it is mined, the entire annual output of the DRC is easily hidden. DRC gold is reportedly smuggled to Bukavu at the border with Rwanda, where it is initially processed (GAO, The Democratic Republic of Congo, September 2010), and then smuggled into four countries to the East of the DRC: Uganda, Rwanda, Burundi and Tanzania, where it may be further refined, and/or transported to other countries.

Suggestions have been made that gold that has been mined in the DRC might then be mixed and hidden within batches of recycled gold, and that it will then enter formal global markets for gold that might be used by users such as electronics industries. This is possible, but not likely. Because DRC gold is already at a high concentration when mined, it can be easily refined by itself, informally in small batches in the eastern DRC or in an adjoining country, and then added to the thousands of tonnes of refined gold stocks in India and the Near East. It is thus hidden in plain sight by being a ubiquitous and fungible substance, very widely traded and used in informal markets, informal banking systems, and artisan jewelry manufacturing. The world's largest market for gold is India, annually consuming about 800 tonnes of gold, about half for jewelry. It is the destination for a very large amount of gold mined throughout the world, and it is a logical destination for DRC gold as well. To the best of our knowledge, no one has traced DRC gold into products manufactured by United States publicly traded companies.

Nevertheless, as said above, there is a possibility that some DRC gold that is not directly refined and sold may be hidden by mixing it within other sources of gold, then falsely assuming the identity and source of that other gold. This would add expense and complexity, but there is no metallurgical barrier against mixing a batch of DRC gold into the 2500 tonnes of gold that is annually produced in one hundred countries where gold is mined, and/or into the 1500 tonnes of gold that is annually produced through recycling in all countries. Mixing could take place prior to refining, or at any stage of refining. Because DRC gold is already highly concentrated, it might logically be mixed with the similar concentrated product of another mining operation, or with a collection of gold jewelry. However DRC gold could also be mixed into lower grade gold materials, or even with other metals; for example, it could be added to copper concentrate at a copper smelter, of which there are more than 100 in more than 40 countries (USGS), and then recovered from copper production byproducts and residues.

If a batch of DRC gold were to be mixed with gold from other sources, there is no unique trace element that would reveal it. To deter mixing of DRC gold into legitimate sources, due diligence is needed by the supply chain, and this is being done now. Dealers in gold are already required in many countries to create and implement "know your customer" (KYC) programs to deter the use of transactions in gold to launder criminal assets and finance terrorism (Anti-Money Laundering-Countering Finance of Terrorism, or AML-CFT). The U.S. Treasury has required such programs since 2006 (31 CFR 103.140). The intergovernmental Financial Action Task Force (FATF) recommends, audits and verifies conforming AML-CFT KYC laws applicable to dealers in gold in its 36 member countries. In 2008 the FATF issued a guidance for dealers in precious metals, and for their governments, with comprehensive advice for supply chain due diligence.

An AML-CFT KYC program at the level of a gold refiner, first and foremost, blocks any proposed transaction with a person who is not an approved customer. Approval requires the following steps:

- Identification of the entity and its principal(s);
- Description its business, its finances, and its source(s) of gold;
- Inspection of the entity's operations to verify that it is engaged in the described business;
- Checks of the entity and its principal(s) against government watch lists;
- Evaluation by experienced AML/CFT KYC personnel of information received;
- Additional inquiry or investigation where questions remain;
- Evaluation of risk; and
- Approval or disapproval.

As noted in the seventh step, the evaluation is made of the risk of dealing with an illegal or inappropriate source, using industry expertise and experience. Due diligence is not, and cannot be, a perfect filter, but is instead a process of risk assessment that leads to an informed best judgment.

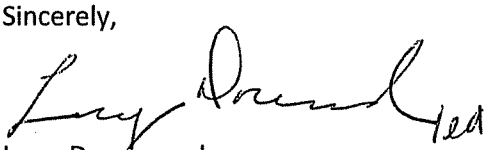
Based upon these circumstances and practices, for a gold refiner with a robust AML-CFT KYC program, the risk of refining DRC gold that has been hidden in a batch of recyclable material is very small. As described above, a more direct route for DRC miners, armed groups and intermediaries in the supply chain would be to refine and market DRC gold by itself, in or near to the DRC. If DRC gold were to be mixed with recyclable materials, it would most likely be mixed in nearby informal refining operations, and would remain in large informal markets. Transport of DRC gold to more formal markets of recyclable materials would not be necessary, and thus would not be likely. Within those more formal markets, as a practical matter, collectors and consolidators of recyclable gold materials do not usually have international businesses, and the more distant such a business is from the DRC, the lower is the risk that it will be offered DRC gold.

There is nevertheless some risk, because geographic separation, standing alone, is insufficient; DRC gold can be transported to distant locations. So a gold refiner's due diligence of collectors and consolidators is necessary. Collectors and consolidators should also be participants in a refiner's supply chain due diligence; they can be and are asked about their sources, including the countries of origin of their

sources, as well as their vetting of their sources, and can be directed to reject any offers from the DRC and its adjoining countries. In addition, after initial vetting by a refiner, transactions with collectors and consolidators should be monitored for unusual activity, such as a new material or a significant increase in volume and/or assay, which might indicate a shipment with a high proportion of 90% DRC gold added to lower concentration jewelry. These steps in application of an AML-CFT KYC program by a refiner will substantially reduce the already low risk of refining DRC gold.

We believe that these steps conform to a reasonable inquiry that the Commission proposes, and we support that proposal. A reasonable inquiry standard will allow gold refiners to use their experience and understanding to make sound investigations of all sources, and judgments that will most efficiently deter transactions that finance DRC conflict. We urge the Commission, however, to make that reasonable inquiry standard directly applicable to recycled gold, and not limit it to newly-mined gold.

Sincerely,



Larry Drummond
General Manager
Metalor Technologies USA