1615 H Street, NW
Washington, DC 20062-2000
Tel: (202) 463-5589
Fax: (202) 463-5707

U.S. Chamber of Commerce

www.uschamber.com

February 28, 2011

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

Re: Proposed Rules on Conflict Minerals Release No. 34-63547; File No. S7-40-10, RIN 3235-AK84

Dear Secretary Murphy:

The U.S. Chamber of Commerce ("Chamber") is the world's largest business federation representing the interests of over three million companies of every size, sector, and region.

The Chamber supports the fundamental goal, as embodied in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), of preventing the exploitation of conflict minerals for the purpose of financing human rights violations within the Democratic Republic of Congo ("DRC"). At the same time, the Securities and Exchange Commission ("SEC") fails to meet the required standard under Section 23(a) (2) the Exchange Act to consider the impact that any rule may have on competition. We note in this connection that the proposed rule if implemented would create a disclosure regime that is burdensome and difficult, if not impossible to comply with, resulting in potentially erroneous disclosure. Because of these flaws, the Chamber requests that the proposed rule be withdrawn and that the potential costs, supply chain complexities and other practical obstacles to implementation be more fully analyzed before new rules are proposed.

By delegating rulemaking authority to the Commission, we believe that Congress intended the agency to collect and analyze this type of data and information when providing more detail on how the rules would be implemented in a practical manner.

The Chamber's concerns are provided in more detail below.

Discussion

At the outset, the Chamber understands the strife inflicted upon those who suffer in the conflict areas and would urge the appropriate authorities to take steps to facilitate its resolution. The Chamber also notes that private investment has been an important driver in increasing economic and living standards in Africa. The Chamber is concerned that the proposed rules, if implemented, may have a chilling effect upon private investment in Africa, adversely impacting economic standards while leaving the conflict unresolved.

In our increasingly high-tech global economy, materials and even trace materials are important to the manufacture and operation of goods from medical devices to cell phones, automotive parts and other consumer products. Therefore, the proposed rules on conflict mineral disclosures ("proposed rules") may affect nearly every manufacturing sector and facet of the supply chain. For this reason, it is important for the SEC to cultivate a comprehensive understanding of this rule's pervasive impact on American industry and the investors who provide the capital used by those businesses.

I. Definitional Issues

Businesses and financial markets thrive on certainty in the form of clear rules and definitions. This atmosphere of certainty creates an environment conducive for rational decision-making by investors.

Many companies affected by this regulation are concerned about their ability to obtain reliable mineral source data given the number of intermediaries involved in the supply chain. This issue is further exacerbated for companies using metal that has been through the smelting process. Unlike diamonds, which are sold in their original form, many metals comprised of the conflict minerals come from an array of sources and are combined through a smelting process that makes their origin harder, if not impossible, to trace.[1] This element of extreme complexity creates a sensitivity and balance that would be needed in any disclosure regime concerning these issues.

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[1] The resources covered by this rulemaking include cassiterite, columbite-tantalite, gold, wolframite, or their derivatives. The SEC in the proposed release states that the DRC produces 15-20% of the world's tantalum and less of the other minerals. Therefore at a minimum 80% or more of conflict minerals do not originate from the DRC.

The challenges inherent to tracking a mineral supply chain primarily arise upstream from the company's operations and are often outside of a company's control. Accordingly, we believe that a "reasonable care standard" would be appropriate given both the volatility of supply chains and the fact that absolute certainty may not be possible in light of the unstable situation on the ground.

We believe the SEC should set forth clear criteria in its final rules to permit companies potentially affected by this regulation to determine with ease and certainty whether or not the new disclosure requirements apply to them. Furthermore, a company should only be subject to the disclosure rules to the extent it exercises a significant level of direct control over the manufacturing of its branded goods, including directly sourcing or procuring raw materials for the manufacture of those goods. In particular, the proposed rule's applicability if conflict minerals are necessary to the functionality or production of a product "contracted to be manufactured" by a company creates substantial uncertainty regarding the scope of the rule and could be read broadly to encompass relationships in which a registrant does not have control over the manufacture of products. Eliminating uncertainty and confusion about which companies will be subject to the rules and ensuring that only companies that directly control input materials and have the capacity to monitor the source of those materials will ensure the disclosure requirements reflect the legislature's intent to create disclosure obligations for companies that are significantly and directly involved with conflict minerals.

The reporting burden could also be improved by including safe harbor and *de minimus* standards in the rule. Safe harbor standards could enable companies distant in the supply chain that have little or no view to or control over the acquisition of the conflict minerals to comply by adopting defined contractual procurement practices, without also being subjected to undue and impractical audit or reporting requirements. Separately, without a *de minimus* standard, even trace elements of one of the conflict minerals could trigger disclosure obligations. Allowing an opportunity for a working group to flesh out and offer guidance on these potential standards would help companies working dutifully to comply with the rule but who may find themselves hindered by a lack of transparency through the supply chain that is out of their control. While a *de minimus* standard may be helpful, it is not a comprehensive solution to the problems at hand.

Furthermore the release states that the list of materials, or their derivatives, covered by the rule is subject to a determination of the Secretary of State used to finance the conflict in the DRC and adjoining Nations. It is our understanding that the State Department has not defined with clarity the geographic area to be considered as the source of conflict minerals. Without such a determination one cannot know with certainty the conflict minerals subject to the disclosure process under the rule.

Hence, the metallurgical and diplomatic difficulties create a dynamic of uncertainty to render disclosure difficult, if not impossible. Such a disclosure regime will be costly for consumers, obfuscate corporate reporting and degrade useful information needed for informed decision making by investors.

II. Implementation Issues and Proposal for a Working Group

If the metallurgical and diplomatic issues could be resolved, at a minimum, the implementation process for this rule will require a phased approach to establish an appropriate and reasonable infrastructure to track minerals and allow companies to engage in accurate reporting. Currently, there are no programs in place that permit companies to track the origin of their minerals and assure they are conflict-free. Given the instability of central Africa, it will take time to develop a reliable process to identify and secure usable metals. Companies will also need time to examine their supply chains to bring them into compliance. It is unrealistic to expect businesses to fully comply with these intricate reporting requirements unless a longer, segmented timeline is given for implementation.

Such a tracking program will need joint action by the United States, other interested international parties and the business community. The issues involved in the proposed rule and the tracking program are well outside the expertise of the SEC. Accordingly, we encourage the SEC and the State Department to establish a working group to better understand the technical issues inherent to regulation of conflict minerals. Each sector impacted by this rule will experience unique challenges as they work to comply with these changes. The final rule must reflect the realities faced by all companies and sectors whether their supply chain is simple, or more than likely, extremely complex.

This Working Group can investigate the issues involved with identification and the feasibility of supply chain authentication. Additionally, the SEC and others should take the time needed to determine the investor interests involved in such disclosures and if a regime can be constructed that will mitigate any negative impact on investors, business operations, the quality of disclosures, or consumer choice. The SEC should also seek a delay in promulgating and implementing the rule. It is more important that a rule making of this magnitude be done correctly in due time rather than improperly in haste. While we understand that the SEC is under a legislatively-mandated timetable for implementation of the rules, an approach that combines appropriate safe harbors and phase-in of segments of the new requirements could provide additional time to develop compliance mechanisms.

III. Market Efficiency and Capital Formation

In the materials released with the proposed rule, the SEC estimates that issuers will be burdened with $71,243,000 in compliance costs and that the disclosures may impact between 1,199 and 5,551 companies, even if they never use conflict minerals. The cost-benefit analysis fails to show any benefits to investors, increased efficiencies for the marketplace or capital formation. Under Section 23(a) (2) the Exchange Act, in promulgating rules the Commission must consider the impact that any rule may have on competition and it is prohibited from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Act's purposes. Notwithstanding the issues at hand, these are the standards the SEC must meet in promulgating a rule.

Accordingly, the SEC should disclose its rationale for determining these costs and impacts, particularly in light of the near impossibility of determining the origin of minerals after going through a smelting process. The SEC should disclose publicly the financial, scientific, metallurgical and other experts used and the material provided to create the cost-benefit analysis.

Shareholders may also be harmed when some companies are forced to make difficult judgments concerning how to report inconclusive data. Because of the inherent problems many companies will face in tracking their supply chain, they may not be able to reach a definitive conclusion as to whether their minerals were derived from a tainted source. Unable to provide unequivocal proof of the negative, many companies would have to report potentially damaging information that may not be

accurate.

Lastly, the costs estimate seems low given the complexities of the issues involved. Realistically, these costs could well be over $100 million, meaning that the proposed rule is an economically significant one. Accordingly, we would respectfully request that the SEC voluntarily submit the proposed rule to an Office of Information and Regulatory Affairs (OIRA) regulatory review process.

Conclusion

The Chamber understands the severity of the human rights violations that this disclosure seeks to confront, however, those issues should be addressed and resolved by the appropriate authorities. In its current form, the proposed rule will not achieve this goal and create a requirement that cannot be truly implemented and may adversely impact businesses and investors.

In its current form, the proposed rule will create regulatory uncertainty for U.S. businesses and investors around the world. The Chamber believes that the SEC can benefit from industry expertise by holding a roundtable discussion and convening a working group to better understand the issues surrounding conflict minerals.

The withdrawal of the rule, a roundtable, establishment of a working group and voluntary OIRA regulatory review are bold steps to better understand the issues involved and if investor and market benefits can be derived by conflict minerals rule makings. Such steps will assist the SEC in complying with the mandates required under the Dodd-Frank Act.

We look forward to working with the SEC throughout this process.

Sincerely,

David Hirschmann
President and CEO
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce

Myron Brilliant
Senior Vice President
International Affairs
U.S. Chamber of Commerce