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February 28, 2011

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

Re: Comments to SEC Proposed Rule on Conflict Minerals
(File number S7-40-10)

Dear Chairman Schapiro:

The Refractory Metals Association (RMA) is a federated member association of the Metal Powder Industries Federation, the largest U.S. based trade association representing the interests of the metal powder producing and consuming industry. The corporate members of the Refractory Metals Association are engaged in the production of refractory metals and/or alloys which include tungsten and tantalum metal. Some of the members are converters of concentrates and pre-cursors such as ammonium paratungstate and scrap to tungsten metal powders which is sold on the world market. Other member companies consolidate the powders into products purchased by a wide variety of manufacturing firms as raw material or finished and semi-finished components in other manufactured products. On this basis, they will be affected by any rules and regulations related to tungsten and tantalum containing minerals such as the proposed rule on Conflict Minerals.

Of RMA's 13 member companies, only a few are public companies subject to the SEC rules, however, they all support the efforts put forward by the SEC to stop the violence and human rights abuse in the Democratic Republic of the Congo and surrounding areas. The proposed rule is fully in line with many of our members' Supplier Policies where they expect all suppliers to adhere to Codes of Conduct, including ethical behavior, respect for human rights, good corporate governance and compliance with all applicable trade and commercial laws. We encourage the SEC to implement the requirements of Section 1502 in a manner that supports the goals of the statute without creating impossible burdens for U.S. manufacturing industries.

We have some concerns related to some of the topics under the ruling and would like to make the following recommendations with respect to the rule:



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Advancing Powder Metallurgy
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In order to minimize these effects, we recommend that the SEC allow companies the flexibility to develop appropriate due diligence measures including standard of care, recognize ongoing efforts to improve the transparency of the supply chain, address the need to phase in requirements, and provide the necessary time to implement these measures. This should all be done in the mindset that US-only regulation of industry creates cost barriers to competitive market positions further straining our domestic economy.

We are concerned that because the tungsten containing mineral wolframite is produced in the Conflict Region, wolframite has now become a Conflict Mineral. Technically, wolframite should be referred to as a mineral that is affected by the Conflict Region. At this stage it is probably unrealistic to change this concept. However, to ensure that the rule does not affect minerals that are not present in the region, we would like to see a more precise definition of “their derivatives”. Since tungsten is naturally present in several minerals among which wolframite is the only one found in the Conflict Region we need to ensure that other tungsten minerals such as scheelite are not included under the rule. By ensuring that only minerals that actually naturally occur in the Conflict Region are affected by the rule more effort can be put towards reducing and hopefully eventually eliminating the transport of conflict minerals from the Conflict Region.

It is important that the regulations acknowledge the realities of the situation on the ground in the DRC, the complexities of the international minerals trade, and the broad and diverse global manufacturing supply chain. We would encourage working through international coalitions, conventions or treaty to help accomplish the objectives of this legislation.

With respect to when the rule should take effect, we suggest that the rule be made only to apply to Conflict Minerals produced on or after the date of the rule’s adoption. Related to the timing, we furthermore suggest that all materials stockpiled prior to the adopted date, whether they be held by companies or governments, are to be exempt from the rule.

In the rule there is a reference to whether scrap should be included under the rule for Conflict Minerals. We strongly recommend an exception is made for scrap. We offer several reasons why scrap should not be included. Firstly, if a strong effort under this rule is put towards preventing minerals from the Conflict Region from entering into the global production of materials and if, as we hope, the rule is effective, no scrap should eventually contain minerals from the Conflict Region. Secondly, it is, as also suggested by others, difficult, if not impossible, to track the source of scrap back to the mineral; thus, efforts used on this task may be in vain and the resources used could be much better spent. Finally, but not least, if this rule were to include scrap it may cause a disincentive in this country to recycle and that would work against many good incentives on preservation of natural resources. Furthermore, if scrap were exempt from the rule it would lead to further incentives for recycling as this would be considered a Conflict Free material under the rule. We recommend that “scrap” be carefully defined so that it

cannot cover any material that has been produced from a mineral, but it must have been through a cycle of production and application. If the term is not carefully defined, it may provide a way for minerals from the Conflict Region to enter the market.

To ensure maximum impact on the illegal actions in the Conflict Region and minimum impact on legal manufacturers of conflict minerals, it would be advisable to put maximum effort under the rule to trace the production of conflict minerals from the Conflict Region. Thus, certification of a mine, mineral processing facility or smelter through an independent auditing firm could reduce the need to audit further down the supply chain. This would mean that issuers should be able to reasonably rely on representations from their processing facilities through their suppliers. Thus, related to the question of whether a mine output constitutes “manufacturing”, we strongly believe it does and as such should be subject to the rules.

With respect to disclosure of the origin of Conflict Minerals that do not originate in the DRC countries, it should not be necessary for a company to reveal the country of origin of these minerals. If a requirement of this legislation is to define the origin of Conflict Minerals of non-DRC origin, perhaps a reasonable alternative would be to define the region of origin (e.g., continent) instead of country. Many manufacturing companies would prefer not to disclose country of origin for competitive reasons. If companies in the US are required to provide such information it would put US companies at a disadvantage relative to foreign companies.

We also encourage an exemption from the rule for companies that only use cutting tools or machine tools made with tungsten or tungsten alloys and it is not incorporated in the final product. For example, the company that produces the cutting tool will have to have ascertained that no material from conflict regions is included in the material and has established that no conflict minerals are part of the product. To ask a manufacturer using the cutting tools as part of the manufacturing process to further certify compliance with the rule would be unnecessary duplication. It would not further serve the objectives of the rule and would place additional burdens on U.S. manufacturing.

We hope the above information will be useful for the U.S. Securities and Exchange Commission in developing a rule that will stop the exploitation and trade of Conflict Minerals from the Democratic Republic of the Congo and surrounding areas that is financing the horrible violence and human rights abuse in the area.



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