

MEMORANDUM

To: File

From: John Fieldsend
Special Counsel
Office of Rulemaking
Division of Corporation Finance
U.S. Securities and Exchange Commission

Date: February 25, 2011

Re: Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act Regarding Congolese Conflict Minerals

On February 25, 2011, Felicia Kung and John Fieldsend of the Division of Corporation Finance met with Jennifer Prisco and Michael K. Stockton of Tyco Electronics Corporation. The participants discussed the Commission's required rulemaking in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which relates to reporting requirements regarding conflict minerals originating in the Democratic Republic of the Congo and adjoining countries. At the meeting, a document was provided to the staff by Tyco Electronics Corporation and is attached to this memorandum.

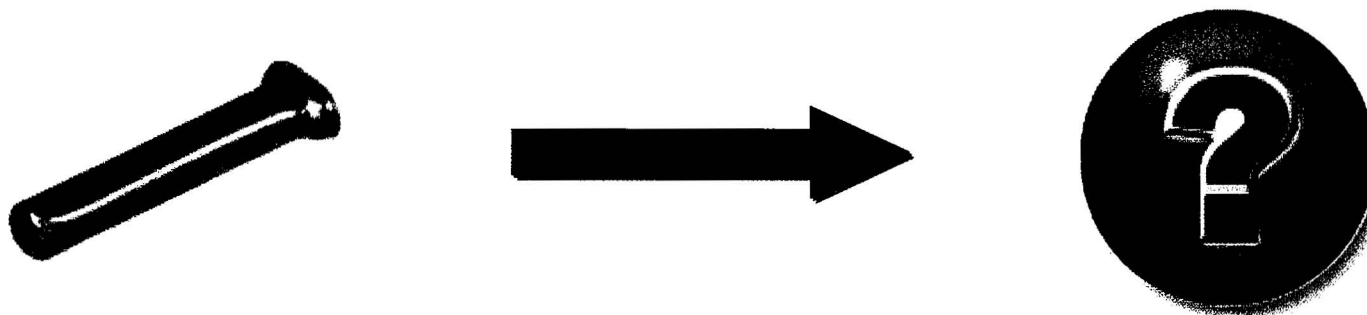
Attachment



Conflict Minerals Traceability Example

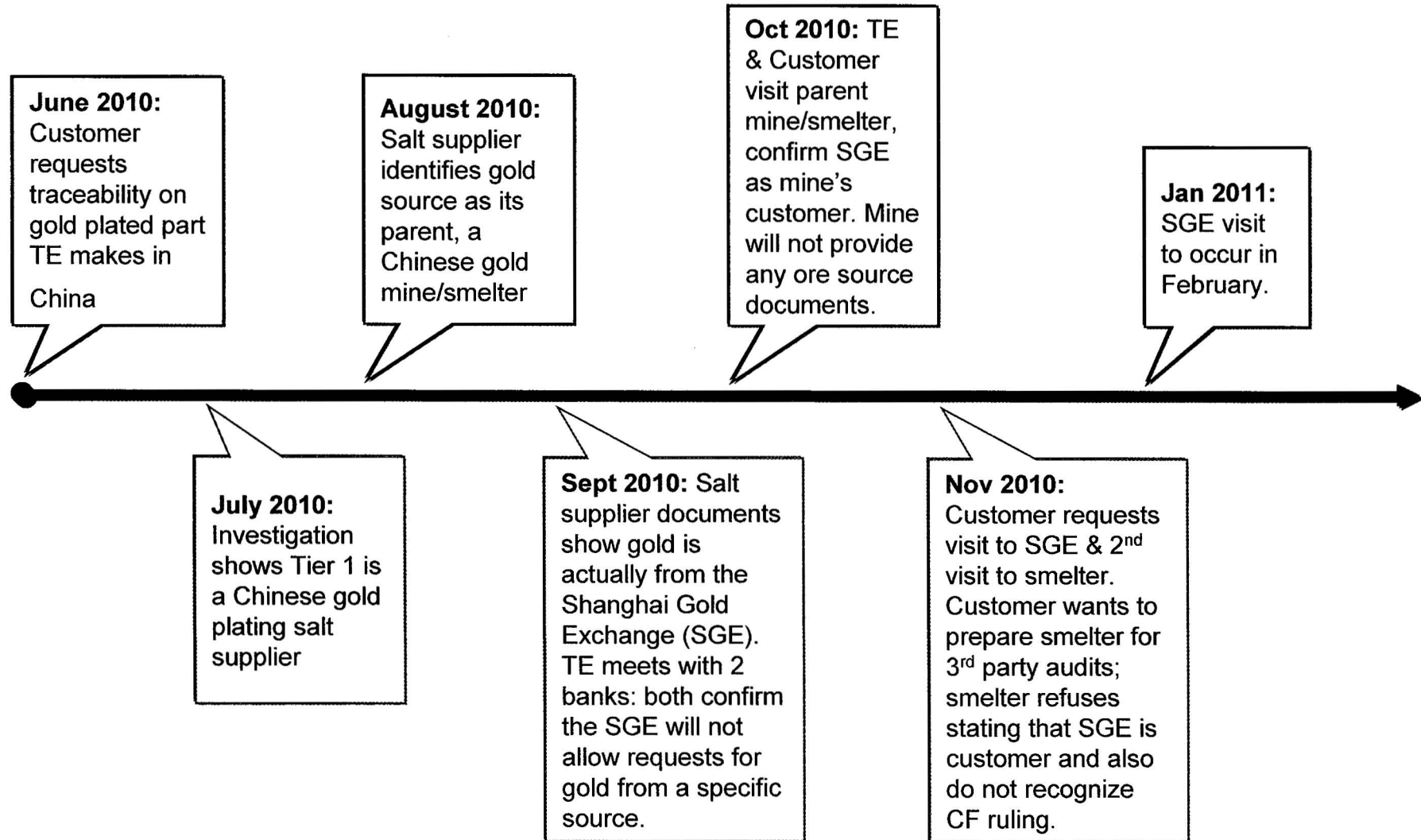
The Traceability Challenge

- The Challenge:
 - Traceability of gold requested on one part number from a key TE customer
 - Find the original source of the gold used in a specific part

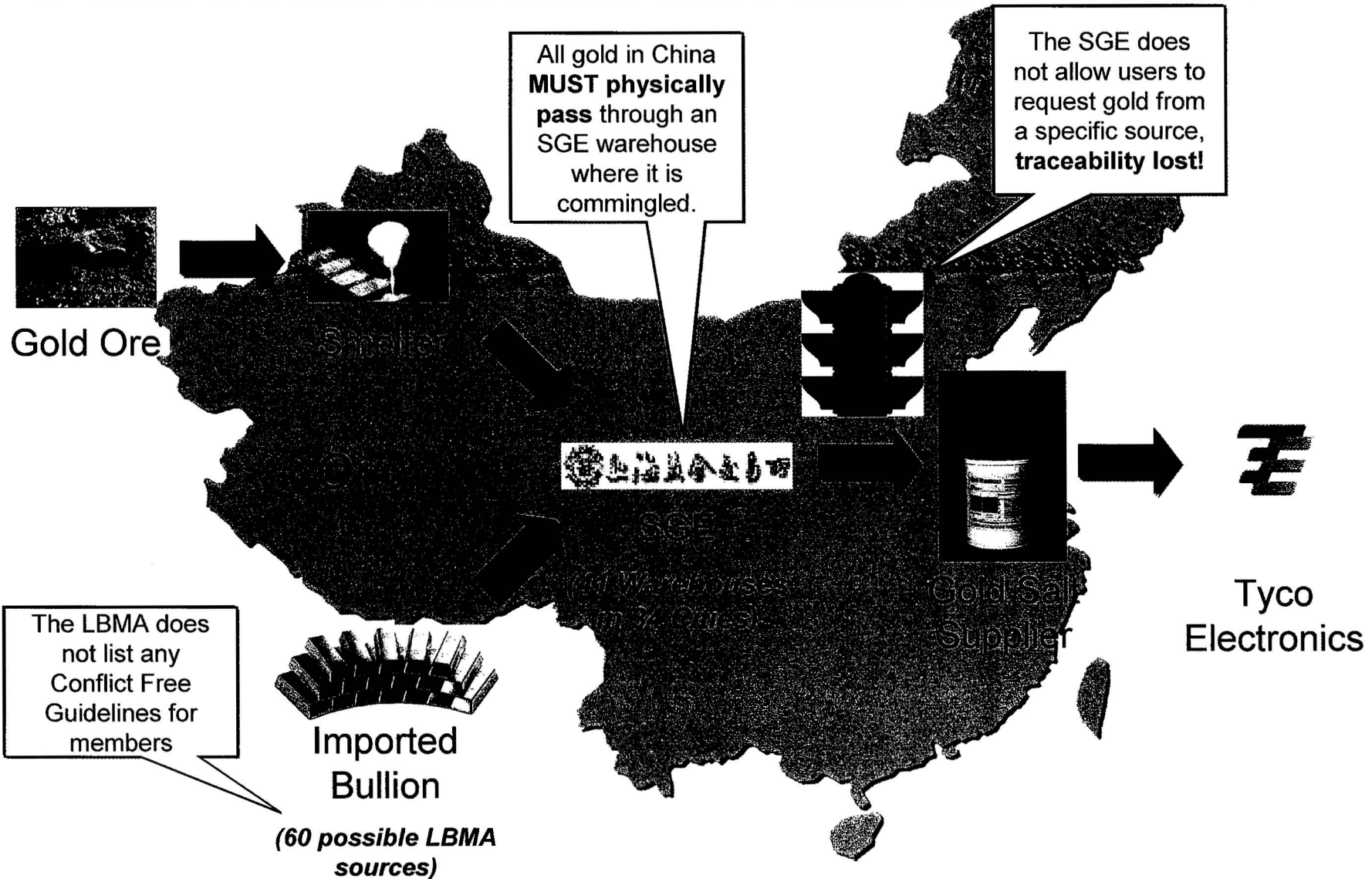


- After 9 months, the Challenge continues...

Timeline



China Gold Supply Chain Example



China Gold Example Summary

- TE has attempted to trace the origin of gold for a specific part
- Laws in China make traceability impossible.
 - Importing gold currently not legal for foreign companies
 - Importing gold salts incurs a 17.5% tax (not competitive)
- Tracing the origin of one part has been expensive.
 - Over \$50,000 in expenses reflect TE's costs
- With infrastructure in China, any standard of due diligence would be insufficient to permit transparency.

Declarations and Due Diligence

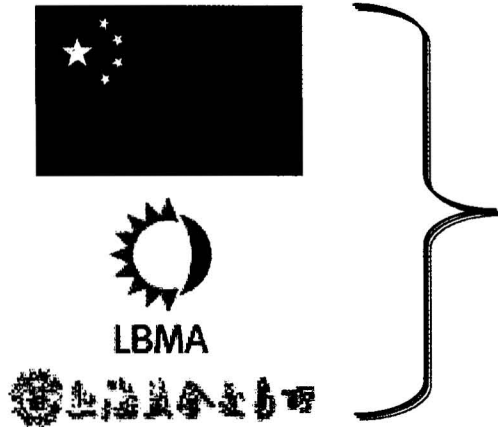
- The Reasonable Country of Inquiry requirement is satisfactory to determine if a company is indeed “DRC Conflict Free”.
- In the event that a company cannot declare its products as DRC Conflict Free, the rule should clarify that third party audits are the proper means of investigating and performing due diligence, not second party audits.
- Second party audits require a company to expose confidential information and supply/sourcing trade secrets to its customers.
- Due diligence should not require a company to endure direct auditing of its supply chain. This can have anti-competitive effects.

Proposed Standard: Commercial Practicability

- Commercially Practicable Standard: a feasibility standard that would prescribe a duty to uncover and make available information that another similarly situated company could uncover under existing market conditions.
- An important distinction can be made from a more conventional “commercial reasonableness” or simple “reasonableness” standard. These standards can be highly discretionary based on the best interests of the company and thus too subjective.
- The Commercially Practicable Standard would drive compliance by making companies responsible for probing a supply chain to the extent that they or any other such company would be able to under the current market conditions. This standard also allows the veracity of due diligence to increase over time.

Summary

- Why is traceability so difficult?



No Conflict Free Requirements

- Traders or merchants are often involved in the supply chain to help provide financing or logistics to end-users; they have no DRC Conflict Free requirements.
- Batch processes such as casting make segregation difficult
 - Separation of conflict free materials often impractical due to lot sizes needed in a given process.

Summary

- In a given year, TE provides over 500,000 unique part numbers.
 - Tracing each part number is impossible
- Local laws and trading exchanges have not adopted Conflict Free guidelines.
- Intermediaries, who make it possible for small businesses to purchase metals, often do not have Conflict Free guidelines.
- Solution:
 - Manufacturers who conduct adequate due diligence yet cannot ascertain origin should not fall under the “bad actor” category. The prescribed standard of care should protect US companies by setting industry expectations, but not necessarily limits, on due diligence.
 - Allow companies to state that gold is not from the DRC instead of requiring the actual origin.