WORLD GOLD COUNCIL

Elizabeth. M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington
DC 20549-1090

28 February 2011

Re: Release No. 34-63547; File Number: S7-40-10. Proposed Rules to Implement Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Ms. Murphy

This letter is submitted on behalf of the World Gold Council ("WGC") in response to the Securities and Exchange Commission's ("SEC" or "Commission") publication of Proposed Rules to implement Section 1502 ("Section 1502") of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[1] We appreciate the Commission's solicitation of comments on this important legislation.

Our comments on specific questions raised in the Proposed Rules dated 15th December 2010 and published in the Federal Register (FR) on 23rd December 2010 are set forth below. Before turning to those comments, however, we believe it is important to state our support for the humanitarian goals of Section 1502, and provide some background information on the WGC, its mission, and the work of its member companies.

SUPPORT FOR THE HUMANITARIAN GOALS OF SECTION 1502

We want to make clear at the outset that the WGC firmly supports Section 1502's humanitarian goals. The WGC and its member companies are totally opposed to activities which finance or benefit armed conflict and the extreme levels of violence which contribute to abuses of human rights. We are a significant contributor to the OECD's work to develop responsible supply chain standards for gold. A number of our member companies are investors in the economies of countries adjoining the Democratic Republic of the Congo (DRC), which helps to promote greater stability and prosperity. The WGC as a collective organization supports the companies' individual efforts.

Many of the WGC member companies publicly support the United Nations Universal Declaration of Human Rights, the Voluntary Principles on Security and Human Rights, the Extractive Industries Transparency Initiative, the World Economic Forum's Partnering Against Corruption Initiative, the United Nations Global Compact and a variety of other programs which seek to address activities that Section 1502 is intended to eliminate.

[1] SEC Release No. 34-63547, 75 FR 80948 (hereafter the "Proposing Release" or "Release").

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We are also supportive of the work of the International Commission on the Great Lakes Region designed to curtail the illegal exploitation of natural resources in the region and to promote certification of legitimate production.

THE WORLD GOLD COUNCIL AND ITS MEMBERS

The WGC comprises twenty-one (21) gold mining and gold royalty companies as members.[2] We are the world's leading authority on the mining and production of gold. Our member companies account for approximately sixty (60) percent of global corporate gold mining production. The six largest producers in the world by tonnage produced in 2010 are WGC member companies. Our members engage only in commercial mining and are not engaged in the artisanal and small scale mining that is the focus of concern over "conflict minerals" in the DRC.[3]

None of the WGC's members currently have operating mines in the Democratic Republic of the Congo (the "DRC"). Some member companies do however have exploration and development projects in the DRC. A number of our member companies have mining operations in countries that share internationally recognized borders with the DRC.[4] WGC member companies continue to develop and implement mining processes that respect and support local environments and the communities in which the companies operate. WGC members strive to develop and integrate best practices into their management systems and production facilities and, we believe, are at the forefront of developing and implementing best practices within the global mining industry.

Several WGC member companies operate in Tanzania for example, where tax contributions from gold production are already one of the largest sources of tax revenue, at 3.6% of the total. In addition, gold mining activity by Barrick and AngloGold Ashanti alone is expected to double the already significant foreign exchange earnings in Tanzania, reaching $1.4 billion per annum in the period 2012-17. We believe it will be important to ensure that legitimate mining activity in such countries is encouraged to flourish given the contribution it makes to the economic development, and therein the stability and prosperity, of the region. Only through such legitimate and responsible investment can the DRC find a path back to peace, stability and the economic growth which underpins many fundamental human rights.

The WGC conducts country-specific research (which we make publically available) regarding gold mining practices and production and we publish a wide range of research papers looking at gold's investment characteristics. Our research examines gold's special characteristics as a store of value, inflation and currency hedge, and portfolio diversifier. We also support innovative uses of gold in the fields of medicine, the environment and electronics.

[2] A list of WGC members and associate members is appended at Attachment A.

[3] Commercial mining is distinguished from artisanal mining, which accounts for approximately 15% of total annual output.

[4] Our usage of the term "adjoining country" follows Section 1502's definition. *See* Section 1502(e) of the Dodd-Frank Act. We understand that the Secretary of State is expected to publish a map identifying mineral-rich zones, trade routes, and areas under the control of armed groups in the DRC and adjoining countries (denoted the "Conflict Minerals Map" by Section 1502(c)(2)). Section 1502 specifies that mines located in areas under the control of armed groups in the DRC and adjoining countries, as depicted on the Conflict Minerals Map, shall be known as "Conflict Zone Mines."

EXECUTIVE SUMMARY

We believe that the rules should be finalized giving consideration to the current North American Industrial Classification System (NAICS) for mining and manufacturing processes so as to decrease the possibility of any unintended mismatch between the policy goals of the U.S. Congress and the ability of issuers to give effect to these goals. Defining mining as "manufacturing" will result in duplication of reporting, confusion for investors and higher implementation costs than originally intended. For these reasons we propose that gold mining should not be considered to be a manufacturing process under the Proposed Rules.

We are concerned that the Proposed Rules should not discourage the sourcing of responsibly mined gold from the DRC countries (or wider African countries), discourage legitimate investment in the region, or encourage substitution of gold with other minerals not covered by the Proposed Rules. It is important to recognize that the identified problem of gold being produced in the DRC and laundered or transported through adjacent countries relates to, often illegal, artisanal and small scale mining and NOT large scale commercial mining.

We are concerned that the nomenclature associated with the Proposed Rules stigmatizes gold and responsible mining from the outset. The classification of all gold as a so-called 'conflict mineral' in the Proposed Rules fails to acknowledge the significant difference between responsibly produced gold and gold which finances or benefits armed groups. This could create confusion and uncertainty regarding the intent of the regulations. Indeed, in Section 1502, gold is ONLY classified as a conflict mineral if it is determined to be financing conflict in the DRC or adjoining countries. Widely-accepted statistics show that approximately 0.6 percent of the gold mined globally annually comes from the DRC with that figure rising to c. 2.7% if production is included from the surrounding countries – principally Tanzania.[5] Tanzania itself was responsible for 44.6 tonnes[6] of gold production in 2010, equating to 1.7% of all gold mined globally. To label all gold a so-called "conflict mineral" prior to the conclusion of the due diligence required for the Conflict Minerals Report leaves the impression that all end-users of gold are using a conflict mineral. We suggest therefore that the phrase "conflict mineral" should only be assigned at the point which a due diligence process determines it to be so. We believe our submission proposes a balanced and fair solution to this issue.

We are also very concerned about the lack of clarity regarding the auditing standards that would apply to companies engaged to conduct a certified independent private sector audit of the Conflict Minerals Report.[7] Section 1502 states that the standards for the audit shall be established by the Comptroller General of the United States. We are not aware of the development of any standards to date that align with the goals of Section 1502 and the Commission's proposed rules. The lack of clear guidance in this area will make it virtually impossible for companies subject to the rules to engage in the type of advance planning that will be necessary for rule compliance. In addition, in our view the lack of guidance around the key aspect of "whether the minerals in

[5] GFMS

[6] GFMS

[7] *See* proposed Item 104 (b)(1)(i) of Regulation S-K; Item 16(b)(1)(i) in Form 20-F; and General Instruction B(b)(1)(i) to Form 40-F.

question finance or benefit armed group" needs to be addressed prior to any standards for audit being developed, as this is a key test of whether any gold is "DRC Conflict Free".

We believe that the lack of clarity regarding the auditing standard must be resolved before companies are asked to produce a Conflict Minerals Report. For this reason, we believe that the Commission should – and we are requesting the Commission – to establish a date for compliance with the rules that follows the development of auditing standards for Section 1502.

We strongly believe that to make progress on the humanitarian goals articulated in Section 1502, any rules adopted by the SEC pursuant to this section must reflect the unique characteristics of gold, its role in the world's economy, and its usage in industry.

We are concerned, however, that certain aspects of the Proposed Rules will actually work to the detriment of the statute's humanitarian goals. For example, gold is crucially important to certain pharmaceuticals and life-saving medical treatments. Any regulation that increases the costs of these pharmaceuticals or treatments or that discourages companies from conducting medical research involving the use of gold should be avoided.[8] For this reason, we believe that issuers that use gold in the manufacture of such pharmaceuticals, machines or devices and companies conducting medical research should not be subject to the Proposed Rules.

The WGC appreciates the difficult task facing the SEC in finalizing and implementing the regulations. We support many of the proposed approaches in the draft regulations. The inclusion of a reasonable country of origin inquiry rather than a more onerous analysis is particularly helpful for mining operations outside the DRC countries. We support the exclusion of scrap gold from the conflict mineral classification, as we do the proposal to require the Conflict Minerals Report to be furnished rather than filed. We also agree with the suggestions that stockpiles created before the effective date of the regulations merit special consideration, and we acknowledge the consideration given to a *de minimis* exemption.

The following sections contain our detailed comments on the Proposed Rules which we hope will be helpful to the Commission as it seeks to finalize the rules.

RESPONSES TO SPECIFIC REQUESTS FOR COMMENT

Issuers That File Reports Under the Exchange Act

Q1. Should our reporting standards, as proposed, apply to all conflict minerals equally?

We do not believe that the Commission's reporting standards should apply equally to all so-called conflict minerals. Gold is unique among the so-called conflict minerals (columbite-tantalite (coltan), cassiterite, and wolframite) due to the role it plays in the global financial economy and because of its chemical properties.

[8] The Commission has duly recognized that the rules will impose significant costs on issuers.

Role in the Global Economy. Gold has always played – and continues to play – a pivotal role in stabilizing the global economy. Global investment in gold totaled 1,616 tonnes[9] in 2010 with a value of around $64 billion. In addition, net long positions on gold reached $120 billion[10] at the end of 2010, illustrating the safe haven characteristics gold provides in times of economic uncertainty. Investment purposes include the acquisition of gold in the form of gold bars or bullion coins as a hedge against inflation, or as a hedge against various types of economic or social upheavals or uncertainties. The price of gold in the world market today is believed to reflect, in large part, the global economic uncertainties that arose in 2008. The U.S. Treasury is estimated to maintain 8,133 tonnes of gold in connection with its global hedging activities. Coltan, cassiterite and wolframite are not used for these purposes. If all gold, regardless of country of origin, is widely stigmatized as a result of the regulations, there is a risk that gold's value as a hedging vehicle that supports the global financial economy will be compromised.

Mining Process. Commercial gold mining typically involves the extraction of low grade ore which must undergo a series of processes before its inherent value starts to be realized. A process for smelting ore into dore at the mine site exists at most gold mines. The dore is then sent to a refinery for the separation of gold from silver and other "impurities". In many instances, the refined gold leaving the refinery is still in the form of a semi-finished material, such as wire or granules which are used by the electronics, automotive, jewellery and other manufacturing industries. London Good Delivery Bars produced by a refinery may be purchased by investors or bullion banks.

The dore leaving the mine has a clear financial value. However, its true economic value is only established at the end of the refining process, when products such as London Good Delivery Bars and other bullion can be traded freely as a currency and thereby contribute to economic stability and growth. In this respect, dore should not be classified as a product as it is not freely tradable in a global market at the point at which it leaves the mine. We believe this further reinforces the view that gold mining should not be classified as a "manufacturing process".

In addition, some of the material leaving the refinery cannot be truly classified as 'products'. Granules and bonding wire are essentially raw materials for manufacturing processes in the dental or electronics sectors for example.

Constantly Re-cycled. Unlike the other minerals identified in Section 1502, gold is constantly re-cycled. In 2010, the total market supply of gold was 4306 tonnes. Of this, over 38% was from scrap or recycled gold.[11] This fact means that it is virtually impossible to trace the origin of any gold to its original source. Newly mined gold from different mines may be mixed with recycled gold at refineries. Routine segregation of supplies at refineries would be required to determine the original source of the gold. This would result in substantial additional costs and potential disruption of established supply chains.

Humanitarian Uses. Gold is the most malleable of the pure metals and is inherently bio-compatible. Due to its unique chemical properties, it is used in the manufacture of

[9] GFMS Survey 2010 – Update 2

[10] GFMS Survey 2010 – Update 2

[11] GFMS Survey 2010 – Update 2

diagnostic tests and medical treatments. For example, minute amounts of gold are used in screening tests for pregnancy, HIV, and for the presence of certain pathogens such as salmonella. Gold also plays a vital role in medical research. It is currently being used in certain cancer treatments and diagnostic tests that are in clinical trials and is being studied for use in vaccine delivery systems.[12]

Industrial Applications. Gold is also unique with regard to the scope of its industrial uses. Vinyl Acetate Monomer (VAM), which is produced using a gold catalyst, is a key ingredient in emulsion polymers, resins and other ingredients used in paints, adhesives, coatings (such as those found on glass and ceramic objects) and textiles. Gold is also a key material in the electronics industry, accounting for approximately 300 tonnes of usage per year.[13]

Security Issues. Due to gold's many uses and its role in the global economy, unique issues apply to its mining, transportation and storage. The inherent value of gold is such that moving it from one place to another requires significant security and measures to ensure the safety of those involved in any such transport activity. The disclosure and audit requirements of the Proposed Rules should not compromise the security of the gold and, thereby, the safety of those involved. To our knowledge, these security issues are unique to gold among the minerals identified in Section 1502.

Gold's unique properties highlight what we believe to be some of the potential unintended consequences of the Proposed Rules. The rules as proposed make no allowance for the type of product being manufactured, its intended usage, or the amount or role of gold used in a particular production process. A company manufacturing jewellery is treated in the same manner as a company using gold nanotechnology to detect cancer. A company using gold to produce a product that ultimately contains no gold seems to be treated in the same manner as a company whose products' use of gold is actually present in the final product. A company using only trace amounts of gold has the same burden of reporting requirements as a company using gold in significant quantities.

We also believe the Proposed Rules could stigmatize all gold being produced in the DRC Countries, as well as potentially other African countries, which could result in an effective boycott on responsibly mined gold from such countries and in turn potential adverse economic implications for otherwise stable countries such as Tanzania.

We believe that the breadth of the Proposed Rules is inconsistent with the intended scope of Section 1502. We urge the Commission to finalize the rules in a manner that recognizes the specific roles gold plays in the world economy and its use in commercial products. In particular,

- Care should be taken not to stigmatize responsibly-produced gold given the critical economic importance of gold

[12] *See* "Gold for good – gold and nanotechnology in the age of innovation", a research paper published by the WGC, available at http://www.gold.org/download/rs_archive/gold_and_nanotechnology_in_the_age_of_innovation.pdf.

[13] Id.

- We do not believe Section 1502 intended doré produced by mines to be classified as a product, particularly given the fact that (a) this would conflict with the NAICS classification of mining, and (b) gold cannot be freely traded in a global market until it passes through a further stage at the refinery (this differs from other so-called conflict minerals)

- The constant recycling and combining of gold from different sources should be considered further given the complexities and costs of segregation

- The humanitarian uses of gold should be excluded from the rules

- The use of gold as a catalyst in producing products which do not in themselves contain gold will broaden the reach of the regulations beyond what Section 1502 envisaged

- Given the inherent value of gold, care should be taken to ensure those responsible for transporting the commodity are not placed at additional risk if information on transport routes for example is made publicly available

Q4. Should our rules apply to foreign private issuers, as proposed? Should we exempt such issuers and if so, why and on what basis? Should the rules otherwise be adjusted in some fashion for foreign private issuers?

The Commission has historically regulated foreign private issuers differently from domestic issuers, in part as a recognition that foreign private issuers are subject to the rules and regulations of the foreign private issuer's home country, and, from a policy perspective, to encourage foreign private issuers to list their securities in the United States. The Commission has sought to balance these factors with its mandate to protect U.S. investors. As a result, foreign private issuers are generally subject to the rules and regulations applicable to domestic issuers, with a number of very important exceptions.

Among other things, foreign private issuers are exempt from the provisions of Section 16 of the Securities Exchange Act of 1934 (the "Exchange Act"), as they relate to the filing of security ownership reports under Section 16(a) and the prohibition against short-swing profits under Section 16(b). In addition, foreign private issuers are not required to file quarterly reports under the Exchange Act or current reports on Form 8-K. Further, foreign private issuers are not required to comply with proxy rules that govern issuers whose securities are registered under Section 13(a) of the Exchange Act. Finally, foreign private issuers are not required to comply with Regulation FD, are exempt from a number of requirements found in the Sarbanes-Oxley Act and are subject to scaled-down executive compensation disclosure. As an example, Item 6 of Form 20-F requires foreign private issuers to disclose the aggregate amount of compensation paid to each individual executive officer unless the laws of the issuer's home country do not require this, in which case the amount of aggregate compensation paid to all executive officers is required. These examples are illustrative of the deference the Commission pays to the regulations of an issuer's home country, while also recognizing that foreign private issuers would be at a competitive disadvantage vis-à-vis their competitors in their home country if they were required to comply with rules designed primarily for domestic issuers.

We believe that the disclosure requirements related to an issuer's use of minerals identified in Section 1502 should be applied to both domestic issuers and foreign private issuers. However, we believe that, with respect to foreign private issuers, this can be accomplished by requiring foreign private issuers to disclose such information (including the "reasonable country of origin inquiry", the Conflict Minerals Report and any associated audit report) in a Form 6-K, rather than in the issuer's annual report on Form 20-F or 40-F. Form 6-Ks are currently required to be filed by foreign private issuers to report all material information the issuer (a) makes or is required to make public pursuant to the laws of its country of incorporation or organization; (b) files or is required to file with a stock exchange on which its securities are traded and which was made public by that exchange; or (c) distributes or is required to distribute to its security holders.

The advantages of revising the instructions to Form 6-K so as to require this disclosure are that (a) information included in a Form 6-K is considered to be "furnished," rather than "filed," which the Commission has recognized as the proper approach to attaching liability to such information in its rule proposal and (b) the disclosure requirements would be filed in a separate report and would not be subsumed within an issuer's annual report. We recognize that the Commission would have to revise the instructions to Form 6-K to capture this disclosure, but we feel that Form 6-K is a superior method of communicating this information to the investing public rather than in an issuer's Annual Report on Form 20-F or 40-F.

Q6. Should we require that all individuals and entities, regardless of whether they are reporting issuers, private companies, or individuals who manufacture products for which conflict minerals are necessary to the functionality or production of the products, provide the conflict minerals disclosure and, if necessary, a Conflict Minerals Report? Is so, how would we oversee such a broad reporting system?

We believe that reporting under the rules should be limited to companies that engage in "manufacturing" as that term has been defined under the North American Industry Classification System (NAICS). Please see our response to Q9 below.

In addition, we believe it would be consistent with the Commission's responsibility to oversee reporting issuers, for the reporting obligation to be limited to those issuers and not extended to cover all individuals and entities.

Q7. Would requiring compliance with our proposed rules only by issuers filing reports under the Exchange Act unfairly burden those issuers and place them at a significant competitive disadvantage compared to companies that do not file reports with us? If so, how can we lessen that impact?

We believe that issuers will incur substantial costs associated with all aspects of compliance with the rules, *e.g.,* internal costs brought about by the need to design new systems to document and trace the origin of all gold, regardless of amount, used in a manufacturing process, and most significantly, the cost of an independent private audit for companies that cannot with 100 percent surety trace the origin of all gold. We believe that the tracing issues are most significant for companies that use gold because the use of identifiably newly-mined gold is the exception – much of the gold used in manufacturing is a mixture of re-cycled and newly-mined gold. We believe that the costs borne in the first instance by the manufacturing companies will result in higher prices for consumers and other end-users. For these reasons, we are recommending that the Commission adopt *de minimis* and humanitarian exemptions.

To lessen the cost impact, we believe that under the Proposed Rules the Commission should not require multiple entities in the same supply chain to report separately. For example, if companies that mine gold were considered to be "manufacturers", their reports would be duplicative of the reports issued by every company that traced its gold back to the mining company. We do not believe that Congress intended to impose significant costs on every participant in the supply chain.

"Manufacture" and "Contract to Manufacture" Products

Q9. Should we define the term "manufacture?" If so, how should we define the term?

We believe that rules adopted pursuant to Section 1502 should define the term "manufacture", consistent with the North American Industrial Classification System (NAICS). If the term is not defined, companies potentially subject to the rules could easily ascribe a meaning to the term that is either at odds with Congressional intent, normative industry standards, or both.

"Manufacture" has specific meanings within the context of the particular industry to which the word relates. The North American Industrial Classification System (NAICS), which was created and is administered by the U.S. Census Bureau, is used by federal government agencies to ascribe a common meaning to businesses, so that statistics related to the U.S. economy can be correctly tracked and analyzed. NAICS was developed jointly by the U.S. Economic Classification Policy Committee, Statistics Canada, and the Instituto National de Estadistica y Geografia in Mexico. The standards make it possible for there to be a high degree of correlation or comparability among all three countries.

Under the NAICS standards, "Mining, Quarrying, and Oil and Gas Extraction" is a completely different category than "Manufacturing." Mining, milling and the production of gold concentrate, doré, and copper concentrate containing gold are not identified as "manufacturing."

> NAICS states in part:
>
> "The **Mining, Quarrying, and Oil and Gas Extraction** sector comprises establishments that extract naturally occurring mineral solids, such as coal and ores; liquid minerals, such as crude petroleum; and gases, such as natural gas. The term mining is used in the broad sense to include quarrying, well operations, beneficiating (*e.g.*, crushing, screening, washing, and flotation), and other preparation customarily performed at the mine site, or as a part of mining activity…"[14] "This industry comprises establishments primarily engaged in developing the mine site, mining, and/or beneficiating (i.e., preparing) ores valued chiefly for their gold and or silver content.

[14] NAICS Sector #21.

> Establishments primarily engaged in the transformation of the gold and silver into bullion or dore bar in combination with mining activities are included in this industry."[15]

> "The **Manufacturing** sector comprises establishments engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products…. Establishments in the Manufacturing sector are often described as plants, factories, or mills and characteristically use power-driven machines and materials-handling equipment…. The materials, substances, or components transformed by manufacturing establishments are <u>raw materials</u> that are products of agriculture, forestry, fishing, <u>mining,</u> or quarrying as well as products of other manufacturing establishments…"[16] (emphasis added)

We firmly believe that the term "manufacture" should be defined according to the NAICS standards. These standards represent the culmination of more than a dozen years of U.S. federal agency work in cooperation with agencies in Canada and Mexico, which themselves also contain numerous existing gold mines and exploration activity. The NAICS standards are also used to classify operations under programs administered by the U.S. Environmental Protection Agency (USEPA) that apply to hard rock mining operations. The Proposed Rules should be revised to indicate that mining and beneficiation associated with the production of doré, gold concentrate, or copper concentrate containing gold is not product manufacturing nor contracting to manufacture. Sludges, slimes, flue dust, carbon fines, slag and other by-products derived from the gold mining or beneficiation processes should similarly be excluded from the definition of manufacturing or contracting to manufacture products. These by-products are directly associated with mining or beneficiation.

In addition to the fact that there are existing U.S. federal definitions, we also note that whilst dore leaving the mine has a clear financial value, its true economic value is only established at the end of the refining process, when products such as London Good Delivery Bars and other bullion can be traded freely as a currency and thereby contribute to economic stability and growth. In this regard, please see our response to Q1 above, discussing the steps that must be taken before the mineral is transformed into a London Good Delivery Bar or a semi-finished material such as granules or wire.

The exclusion of mining, beneficiating, milling and smelting at the mine site from the definition of "manufacturing" will only remove the reporting requirements for mining companies as set out in the Proposed Rule. Mining companies will remain part of the due diligence process undertaken by "manufacturers" elsewhere in the supply chain if the reasonable country of origin inquiry determines the gold may not be "DRC Conflict Free". Thus, to classify gold miners as "manufacturers" would be duplicative and result in unnecessary costs.

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[15] NAICS Section 21222.

[16] NAICS Sector #31-33.

WORLD GOLD COUNCIL

Mining Issuers as "Manufacturing" Issuers

Q13. Is it appropriate for our rules, as proposed, to consider reporting issuers that are mining companies as "persons described" under Section 1502? Does the extraction of conflict minerals from a mine constitute "manufacturing" or "contracting to manufacture" a "product" such that mining issuers should be subject to our rules?

For the reasons stated above in response to Q9, we do not believe that the extraction of gold from a mine constitutes "manufacturing" or "contracting to manufacture" a "product" within the meaning of Section 1502.

Q14. Alternatively, should a mining issuer not be viewed as manufacturing a product under our rules unless it engages in additional processes to refine and concentrate the extracted minerals into saleable commodities or otherwise changes the basic composition of the extracted minerals?

We believe that the alternative stated in this question is correct; a mining issuer should not be viewed as manufacturing a product under the Commission's rules unless it engages in additional processes to refine and concentrate the extracted minerals into saleable commodities. Specifically, refining, concentrating, or other forms of beneficiation involving gold, tin, tantalum or tungsten ore at a mine site does not constitute manufacturing.

Q15. If so, what transformative processes, if any, should mining issuers be permitted to perform on conflict minerals before our proposed rules should consider them to be manufacturing products to which conflict minerals are necessary?

Mining, beneficiating (*e.g.*, crushing, screening, washing, flotation, etc.), transformation of the gold into doré at the mine site, and the production of copper concentrate containing gold should be considered transformative processes that do <u>not</u> qualify as manufacturing. This is consistent with the NAICS definitions for the mining and beneficiation of gold, tin, tantalum and tungsten, as described in greater depth in our response to Q9 above.

When Conflict Minerals are "Necessary" to a Product

Q16. Should our rules define the phrase "necessary to the functionality or production of a product," or is that phrase sufficiently clear without a definition? If our rules should define the phrase, how should it be defined?

We believe that the Commission does not need to define this phrase in its rules, but we do believe that certain exemptions or interpretations need to be provided in conjunction with the rules.

First, we believe that the phrase should be interpreted to exclude *de minimis* amounts of gold that are used in a production process, regardless of whether gold is or is not contained in the product being produced. As we noted at the beginning of this letter, gold is unique among the minerals identified in Section 1502 because of its chemical properties. It therefore has many commercial uses, including applications in the medical field. Although the Commission states in the Proposed Rules that it does not intend to define when a so-called conflict mineral is necessary to the functionality or production of a product, the Proposed Rules nonetheless state the Commission's intention to include products whose production process "intentionally includes" a so-called conflict mineral and for which a so-called conflict mineral is necessary to the production process, even if the so-called conflict mineral is not included anywhere in the final product.[17]

It appears to us that this is the broadest possible meaning of the phrase and that this breadth is inconsistent with Section 1502. Our reading of the legislative history indicates that Congress did not envision rules that would sweep thousands of U.S. and foreign issuers into a new reporting scheme. Instead, we believe that Congress intended a more limited reporting scheme that focuses on gold mined in specific areas of the world that are determined by the Secretary of State to be under the control of armed groups, or which is transported through high-risk areas with relatively weak security which makes such shipments vulnerable to extortion by armed groups. The latter situation is not one which would apply to gold produced in the formal mining sector. Given this very specific intent of the statute, we believe that the rules should contain both a *de minimis* and a "humanitarian purposes" exemption, instructions or interpretations.[18]

Second, we believe that gold occurring naturally in a product or that is a by-product of another mineral process should not be included within the rules' coverage. As we noted at the beginning of this letter, gold is found in trace amounts in a myriad of other minerals. For example, gold and copper are naturally occurring in some deposits, so copper concentrate containing gold which is produced by a mine should not be within the scope of the word "product."

Q17. If we were to define this phrase, should we delineate it to mean that a conflict mineral would be necessary to a product's functionality only if the conflict mineral is necessary to the product's basic function? If so, should we define the term "basic function" and, if so, how should we define that term? Should we define the term to include components of a product if those components are necessary to the product's basic function such that a conflict mineral would be considered necessary to the functionality of a product if the conflict mineral is necessary to the functionality of any of the product's components that are required for that product's basic function? For example, if the only conflict minerals in an automobile are contained in the automobile's radio, should our proposed rules consider those conflict minerals necessary to the automobile's functionality even if the automobile's basic function is for transportation? If that radio is marketed and sold with the automobile, should our proposed rules consider the conflict minerals that are isolated in the radio necessary to the functionality of the automobile? Alternatively, should such a definition consider only conflict minerals isolated in an automobile component required specifically for the automobile's basic function as necessary for the functionality of the automobile?

If the Commission defines this phrase, we believe it should be defined to exclude products for which a so-called conflict mineral is not necessary to the product's basic function. Using an example from the Proposed Rules, we believe that if gold is contained in an automobile's radio, it should not be considered necessary to the

[17] Proposing Release at II.B.2.

[18] Section 1502(e)(4).

automobile's functionality. The functioning of the automobile, *i.e.*, its ability to move forwards and backwards, is not dependent on the radio in the car.

We believe that products that use a: (i) *de minimis* amount of gold; (ii) serve only humanitarian purposes; (iii) do not contain gold in the final product or (iv) are not necessary for the product's basic function, should be excluded from coverage under the rules.

We also believe all gold bars held in storage in central or bullion banks on the effective date of the final rules should be grandfathered. Similarly all bars exhibiting the London Bullion Markets Association (LBMA) mark on or before the effective date of the final rules should be classified as DRC Conflict Free. All gold coins issued by governments should similarly be grandfathered.

Location of Disclosure

Q22. Should we require issuers to provide the conflict minerals disclosure and reporting requirements mandated under Section 13(p) in its Exchange Act annual report, as proposed? Should we require, or permit, the conflict minerals disclosure to be included in a new, separate form furnished annually on EDGAR, rather than adding it to Form 10-K, Form 20-F, and Form 40-F? Would requiring issuers to disclose the information in a separate annual report be consistent with Section 13(p)? Should we develop a separate annual report to be filed on EDGAR that includes all of the specialized disclosures mandated by the Dodd-Frank Act? What would be the benefits or burdens of such a form for investors or issuers with necessary conflict minerals?

We support the use of existing annual report forms for purposes of complying with the reporting obligation, and in the case of foreign private issuers furnishing such information in a Form 6-K, principally because we believe that the development of new forms will add to the cost of the rules, particularly in the short term, *i.e.*, as companies and users of the reports become adjusted to a new form.

To reiterate our response to Q5 above, we believe that the disclosure requirements related to an issuer's use of minerals identified in Section 1502 should be applied to both domestic issuers and foreign private issuers. However, we believe that, with respect to foreign private issuers, this can be accomplished by requiring foreign private issuers to disclose such information (including the "reasonable country of origin inquiry", the Conflict Minerals Report and any associated audit report) in a Form 6-K[19], rather than in the issuer's annual report on Form 20-F or 40-F. Form 6-Ks are currently required to be filed by foreign private issuers to report all material information the issuer (a) makes or is required to make public pursuant to the laws of its country of incorporation or organization; (b) files or is required to file with a stock exchange on which its securities are traded and which was made public by that exchange; or (c) distributes or is required to distribute to its security holders.

[19] We also propose that domestic private issuers should disclose this information in a Form 8-K.

Q23. Should we require some brief disclosure in the body of the annual report, as proposed?

We do not believe that this material should be included in the annual report. For reasons stated elsewhere in the submission, furnishing this in an exhibit with appropriate amendments to the title of that exhibit to read 'Country of Origin Disclosure' or similar, should be more than adequate in meeting the requirements of the Commission and investors.

Q24. Should our rules provide that, rather than be included in the body of the annual report, all required information would be set forth in the Conflict Minerals Report that would be furnished as an exhibit to the annual report?

See our response to Q.24. We do not believe this material should be included in the annual report. .

Q25. Instead, should all required information, including the Conflict Minerals Report, be included in the body of the annual report?

We do not believe that the Conflict Minerals Report should be included in the body of the annual report. Please refer to our response to Q30, below.

Q26. Should issuers with necessary conflict minerals that did not originate in the DRC countries be required to disclose any information other than as proposed? For example, should we require such an issuer to disclose the countries from which its conflict minerals originated?

We do not support country-specific disclosure requirements. As noted above in our response to Q1, it is virtually impossible to trace gold used in commercial businesses to a specific mine without a wholesale restructuring of established and legitimate refining practices. In addition, we do not believe Section 1502 intended for countries other than the DRC countries to be identified.

Q27. Should we, as proposed, require issuers to describe the reasonable country of origin inquiry they used in making their determination that their conflict minerals did not originate in the DRC countries? Is a separately captioned section in the body of the annual report the appropriate place for this disclosure?

We do not believe it is necessary to require companies that have determined that their so-called conflict minerals did not originate in the DRC countries to describe their reasonable country of origin inquiry. Companies making this determination will have the records that support their determinations available in the event the Commission needs to review them.

Q28. Should we require, as proposed, that an issuer maintain reviewable business records if it determines that its conflict minerals did not originate in the DRC countries? Are there other means of verifying an issuer's determination that its minerals did not originate in the DRC countries? Should we specify for how long issuers would be required to maintain these records? For example, should we require issuers to maintain records for one year, five years, 10 years, or another period of time?

Please refer to our response to Q27 above. We believe that the Commission should propose a specific record-keeping period; we support a one year requirement.

Q29. Should we require the disclosure in an issuer's annual report to be provided in an interactive data format? Why or why not? Would investors find interactive data to be a useful tool to easily find the information provided? If so, what format would be most appropriate for providing standardized data disclosure? For example, should the format be eXtensible Business Reporting Language (XBRL), as one letter recommended, or should the format be eXtensible Markup Language (XML)?

At this time, we do not see the benefit of using an interactive data format inasmuch as an issuer's disclosure will be narrative, not numerical.

Q30. Should we require issuers to briefly disclose in the body of their annual reports the contents of the Conflict Minerals Report? If so, how much of the information in the Conflict Minerals Report should we require issuers to disclose?

We do not support inclusion in the annual report of material contained in the Conflict Minerals Report. As noted in our response to Q1, there are unique security issues associated with the mining, transportation and storage of gold. As an exhibit to the annual report, it should be possible to redact or otherwise provide confidential treatment to certain portions of the exhibit in order to protect the physical safety of individuals involved in gold mining, transportation and storage. In this regard, we note that broker-dealers are permitted under SEC rules to protect certain financial information furnished to the SEC.[20] We believe that similar accommodations will be necessary with regard to certain information contained in the Conflict Minerals Report for gold.

Q31. Should we require an issuer to post its audit report on its Internet website, as proposed?

We have confidentiality concerns as noted above with respect to the public disclosure of certain information. We also note that at this time, there is no clarity regarding the auditing standards that will be applicable to the Conflict Minerals Report. We believe that auditing standards specific to Section 1502 must be published before the Commission's rules are implemented. We cannot fully respond to this question without knowing the proposed auditing standards, *i.e.*, without knowing the types of information that will be required in the audit report.

[20] *See* Exchange Act Rule 17a-5.

Q32. Should we require, as proposed, that an issuer post its Conflict Minerals Report and its audit report on its Internet website at least until it files its subsequent annual report? If not, how long should an issuer keep this information posted on its Internet website?

Please refer to our responses to Q30 and Q31 above with respect to our concerns regarding the confidentiality that will need to be accorded to at least some portions of the Conflict Minerals Report, and our inability to comment on the public disclosure of the audit report without clarity regarding the audit standards.

Standard for Disclosure

Q33. Is a reasonable country of origin inquiry standard an appropriate standard for determining whether an issuer's conflict minerals originated in the DRC countries for purposes of our rules implementing the Conflict Minerals Provision? If not, what other standard would be appropriate? Rather than requiring a reasonable country of origin inquiry as proposed, should our rules mandate that the standard for making the supply chain determinations, as set forth in Exchange Act Sections 13(p)(1)(A)(i) and (ii) (and described below), also applies to the determination as to whether an issuer's conflict minerals originated in the DRC countries? Should we provide additional guidance about what would constitute a reasonable country of origin inquiry in determining whether conflict minerals originated in the DRC countries?

We believe that a reasonable country of origin inquiry as described in the Proposed Rules is an appropriate standard for determining whether an issuer's minerals originated in the DRC countries. We agree with the Commission that each issuer will need to tailor its inquiry to its specific facts and circumstances.

Q34. Should we not require any type of inquiry? For example, would it be appropriate and consistent with the Conflict Minerals Provision to permit an issuer to make no inquiry, so long as it disclosed that fact?

As noted above in our responses to Q16 and 17, we believe it would be appropriate for companies that manufacture or contract to manufacture products that use a: (i) *de minimis* amount of gold; (ii) serve only humanitarian purposes; (iii) do not contain gold in the final product or (iv) are not necessary for the product's basic function, to make no inquiry with respect to the country of origin, so long as this fact is disclosed.

Please also see our response to Q17 as regards the provisions for grandfathering existing gold bars and coins.

Q35. Should issuers be able to rely on reasonably reliable representations from their processing facilities, either directly or indirectly through their suppliers, to satisfy the reasonable country of origin inquiry standard? If so, should we provide additional guidance regarding what would constitute reasonably reliable representations and what type of guidance should we provide? If not, what would be a more appropriate requirement?

We believe that issuers must be able to rely on reasonably reliable representations from their processing facilities, either directly or indirectly through their suppliers, to satisfy the reasonable country of origin inquiry standard. We do not believe that additional guidance from the SEC regarding what would constitute reasonably reliable representations is needed at this time.

Q36. Should any qualifying or explanatory language be allowed in addition to or instead of the reasonable country of origin inquiry standard, as proposed, regarding whether issuers' conflict minerals originated in the DRC countries? For example, should issuers be able to state that none of their conflict minerals originated in the DRC countries "to the best of their knowledge" or that "they are not aware" that any conflict minerals originated in the DRC countries?

We support the use of language that aligns with the reasonable country of origin inquiry. Issuers should be permitted to state that "to the best of their knowledge" no so-called conflict minerals originated in DRC countries, or that "they are not aware" that any so-called conflict minerals originated in the DRC countries or similar phrases. These answers are necessary because, at least in the case of gold, it is impossible to trace the origin in the majority of cases with certainty.

Content of Conflict Minerals Report

Q37. Should our rules, as proposed, require issuers that are unable to determine the origin of their conflict minerals to label their products that contain such minerals as not "DRC conflict free"? Is this approach consistent with the Conflict Minerals Provision"? Would it be more appropriate to allow such issuers to label such products differently, such as "May Not Be DRC Conflict Free"? Would having a separate category for products that contain such unknown origin minerals be consistent with the Conflict Minerals Provision? Would the proposed approach be confusing for readers, or can issuers sufficiently address any confusion by including supplemental disclosure for those products that contain minerals of unknown origin?

We believe that a separate reporting category should be created where it is not possible to definitely determine the origin of the mineral at issue. Issuers should be permitted to use a phrase such as "Conflict Free Status Uncertain." We do not believe this approach would be confusing for investors; rather, we believe that other terms, *e.g.*, "Not DRC Conflict Free," are inherently misleading.

Q38. Should our rules, as proposed, permit issuers to describe their products that contain conflict minerals that do not qualify as being DRC conflict free or that may not qualify as being DRC conflict free based on their individual facts and circumstances? If not, how should we require issuers to describe their products that contain conflict minerals that do not qualify as being DRC conflict free? If an issuer had hundreds or thousands of products that were not DRC conflict free, would the report provide overwhelming information? Would it be unduly expensive to produce?

Issuers should be able to describe their products based on the issuer's own facts and circumstances. Issuers are in the best position to know their products and to describe them in terms commonly understood within their industries.

Q39. Should our rules, as proposed, require issuers to disclose the facilities, countries of origin, and efforts to find the mine or location of origin only for its conflict minerals that do not qualify as DRC conflict free, and not for all of its conflict minerals? Alternatively, should we require issuers to disclose the facilities, countries of origin, and efforts to find the mine or location of origin for all of its conflict minerals regardless of whether those conflict minerals do not qualify as DRC conflict free?

The rules should require issuers to disclose the facilities, countries of origin, and efforts to find the mine or location of origin only for so-called conflict minerals that do not qualify as "DRC Conflict Free". Rules drafted in this manner would be consistent with the requirements of Section 13(p) of the Exchange Act.

Q40. Should our rules require issuers to disclose the mine or location of origin of their conflict minerals with the greatest possible specificity in addition to requiring issuers, as proposed, to describe the efforts to determine the mine or location of origin with the greatest possible specificity? If so, how should we prescribe how the location is described?

The rules should not require issuers to disclose the mine or location of origin with the greatest possible specificity. Please refer to our response to Q1 above regarding security concerns. The term "greatest possible specificity" should be read as a modifier of the word "efforts" as used in Section 13(p), *i.e.*, the issuers' <u>efforts</u> to determine the mine or location of origin should be described with the greatest possible specificity.

Q41. As suggested in a submission, should our rules require issuers to include information on the capacity of each mine they source from along with the weights and dates of individual mineral shipments?

Issuers should not be required to include information on the capacity of each mine they source from along with the weights and dates of individual mineral shipments. This information is clearly not included in Section 13(p) and raises security threat issues we have previously discussed. Furthermore, we do not believe disclosure of such information will be of any value to the reader.

Q42. We are proposing that an issuer "certify the audit" by certifying that it obtained such an audit. Should we further specify the nature of the certification? We are not proposing that anyone sign this certification. Should our rules require issuers to have the audit's certification signed? If so, who should be required to sign the certification? Also, if we revise our proposal to require an individual to sign, should the individual who signs the certification sign it in his or her capacity within the company or on behalf of the company? What liability should our rules assign to the individual who signs the certification?

We support the Commission's decision to have issuers certify the audit by certifying that the issuer obtained such an audit. We cannot support an individual signing the audit on behalf of the issuer or in his or her own capacity in view of the lack of clarity surrounding the auditing standards. Whilst we support the general framework for liability outlined in the Proposed Rules and recognize the liability assigned to the corporate body, no liability should be assigned to any individual required to sign the audit.

Q43. Should our rules, as proposed, require an issuer to furnish its independent private sector audit report as part of its Conflict Minerals Report? Are there other ways to give effect to the Conflict Minerals Provision's requirement of Section 13(p)(1)(B) that the issuer "certify the audit…that is included in" [emphasis added] the Conflict Minerals Report? Would investors find the audit report useful? How would the potential liability for a furnished audit report affect the cost and availability of such audit services?

Issuers should not be required to furnish their independent private sector audit report as part of the Conflict Minerals Report. This is not a requirement of Section 13(p), and as noted above, the report is likely to contain information that poses a security threat to multiple persons. The audit report can be maintained by the issuer for a Commission-proscribed period of time.

Although we do not know what the auditing standards will be, we believe that the audit report is likely to be extremely expensive, particularly if the standards require on-site verification of mining deposits, source of the ore, shipments, storage, transfers and deliveries to the refinery. In the absence of clear auditing standards, we believe the traditional auditors will err on the side of caution to avoid taking on any additional liability. This in itself could lead to potential over cautious classifications of so-called conflict minerals.

Where a company is able to determine it is not using a source of so-called conflict minerals after undergoing due diligence and a certified audit report during one reporting year, submissions for future years should be reported on an exceptions basis only to reduce the costs of compliance.

We are also concerned that requiring the audit report to be furnished as part of the Conflict Minerals Report could greatly increase the costs of auditing services, and affect their availability, without any significant added benefit to investors or the Commission.

Q44. Should our rules provide that, as proposed, the independent private sector audit report furnished as an exhibit to an issuer's annual report not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the issuer specifically incorporates it by reference? Is this audit report qualitatively different from other expert's reports for which consent is required under our rules?

We believe that the audit report should not be included in the Conflict Minerals Report. We agree that audit reports, if required to be included in the Report, should not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act.

In response to the second question, we agree that the auditor that provides the audit in connection with a Conflict Minerals Report, should not be considered an "expert" under Rule 436 of the Securities Act. Section 7(a) of the Securities Act, which requires the filing of certain consents with registration statements, states, in part, "If any accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared a report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement." We believe that a contrast can be drawn between an auditor's report of an issuer's financial statements or an engineer's report and an audit report prepared in connection with an issuer's Conflict Minerals Report. In the first case, an issuer's financial statements are governed by generally accepted accounting principles, and there is substantial authority and regulation regarding the processes and procedures employed by independent auditors. Similarly, a report filed by an engineer relating to the viability of a mining or drilling operation requires the filing of a consent since such individual is a recognized authority on such matters and such report would be material to an investor in making an investment decision.

In the case of an audit in connection with the filing of a Conflict Minerals Report, there is no authority regarding the processes and procedures that would need to be employed in order to provide an audit, it is unclear what type of firm would provide such audit and whether such firm could truly be considered an "expert" in terms of verifying the source of minerals used by the issuer, and such report would likely not be material to investors in the same manner as an audit report on an issuer's financial statements or an engineer's report on the viability of a mining or drilling project. Therefore, we believe that these cases can be distinguished and that a firm that provides an audit in connection with the filing of a Conflict Minerals Report should not be considered an "expert" and not require a consent under Rule 436 of the Securities Act.

Location and Furnishing of Conflict Minerals Report

Q46. Should we, as proposed, require the Conflict Minerals Report to be furnished as an exhibit to the issuer's annual report? If not, how should it be provided?

Yes, to the extent that the Commission requires issuers to submit the Conflict Minerals Report as an exhibit to the issuer's annual report, we believe that such a report should be furnished rather than filed, as proposed.

Q47. Should we require the Conflict Minerals Report to be filed as an exhibit, rather than furnished, which would affect issuers' liability under the Exchange Act or under the Securities Act (if any such issuer incorporates by reference its annual report into a Securities Act registration statement)?

We do not support a "filing" standard. There is no indication in Section 1502 that Congress intended to subject issuers submitting these reports to Section 18 liability.

Due Diligence Standard in the Conflict Minerals Report

Q50. Should our rules, as proposed, require an issuer to use due diligence in its supply chain determinations and the other information required in a Conflict Minerals Report? If so, should those rules prescribe the type of due diligence required and, if so, what due diligence measures should our rules prescribe? Alternatively, should we require only that persons describe whatever due diligence they used, if any, in making their supply chain determinations and their other conclusions in their Conflict Minerals Report?

We believe that disclosure of an issuer's due diligence with respect to its supply chain determinations is appropriate. We do not believe, however, that the rules should prescribe any particular type of due diligence. We believe the Commission is correct in noting that due diligence standards for supply chain determinations may evolve over time. In this regard, we believe that the rules should permit issuers to make reasonable decisions with regard to standards or guidance developed by industry or governmental groups for so-called conflict mineral supply chains, and to use such standards or guidance in connection with complying with SEC rules.

Q51. Should different due diligence measures be prescribed for gold because of any unique characteristics of the gold supply chain? If so, what should those measures entail?

Supply chain determinations for gold will need to recognize the security issues that are unique to this mineral. The Commission's rules could allow for these issues by permitting issuers to redact sensitive material from material made available to the public.

Q52. Should our rules state that an issuer is permitted to rely on the reasonable representations of its smelters or any other actor in the supply chain, provided there is a reasonable basis to believe the representations of the smelters or other parties?

Issuers should be able to rely on the reasonable representations of any actor in the supply chain. The rules would not be workable without the ability to rely on such reasonable representations.

Q53. Is our approach to issuers that are unable to determine that their products did not originate in the DRC countries appropriate?

Please refer to our response to Q37 above.

Q54. Should our rules prescribe any particular due diligence standards or guidance?

We do not believe the Commission's rules should prescribe any particular type of due diligence methods. As noted above in our response to Q50, supply chain standards and best practices are evolving, and issuers need to be able to take those developments into consideration. Flexibility is also needed because of differences among the supply chains for the different types of minerals identified in Section 1502.

Q55. Should our rules require that an issuer use specific national or international due diligence standards or guidance, such as standards developed by the OECD, the United Nations Group of Experts for the DRC, or another such organization? If so, should our rules require the issuer to disclose which due diligence standard or guidance it used? Should we list acceptable national or international organizations that have developed due diligence standards or guidance on which an issuer may rely? Should our rules permit issuers to rely on standards from federal agencies if any such agencies develop applicable rules?

We do not believe the rules should require issuers to use specific national or international due diligence standards. We would not object to a requirement that issuers disclose a standard or standards they considered in conducting their due diligence. We support the reference to the valuable work of the OECD in developing guidance in this area, and would encourage the Commission to permit the use of other rigorous guidance or frameworks where they exist.

Furnishing of the Initial Disclosure and Conflict Minerals Report

Q56. Should our rules, as proposed, require that a complete fiscal year begin and end before issuers are required to provide their initial disclosure or Conflict Minerals Report regarding their conflict minerals?

We believe that a complete fiscal year should begin and end before an issuer is required to comply with the Commission's rules. Most importantly, however, we believe that the Commission must adopt a transition period or some similar type of delayed effective date that gives issuers, auditors and actors in the supply chain time to plan for the new rules. In this regard we note that there are currently at least three crucial pieces missing from the regulatory program: the Conflict Minerals Map, the State Department Strategy Paper called for by Section 1502, and auditing standards. No issuer should be expected to incur the costs – which we believe will be substantial – to engage in planning strategies, system designs, and the engagement of auditors and other consultants, without knowing (i) exactly what regions have been determined by the State Department to be under the control of armed groups in the DRC and adjoining countries; (ii) the State Department's plan for providing guidance to commercial entities seeking to exercise due diligence with respect to the origin and chain of custody of minerals used in their products; and (iii) what auditing standards will with certainty be acceptable to the Comptroller General of the United States.

Q58. Should we phase in our rules and permit certain issuers, such as smaller reporting companies, to delay compliance with the Conflict Minerals Provision's disclosure and reporting obligations until a period after that which is provided in the Exchange Act Section 13(p)(1)(A)?

Please refer to our response to Q56 above. We believe that a transition period or delayed effective date will be necessary for all issuers. We believe an effective date of fiscal years ending on or after January 2013 would enable the correct assurance processes to be put in place.

Time Period in which Conflict Minerals Must be Disclosed or Reported

Q59. Is "possession" the proper determining factor as to when issuers should provide the required disclosure or a Conflict Minerals Report regarding a necessary conflict mineral? If not, what would be a more appropriate test and why?

We believe the date the issuer takes possession of the mineral is the appropriate date for determining the disclosure obligation.

Q61. We note it is possible issuers may have stockpiles of existing conflict minerals that they previously obtained. Do we adequately address issuers' disclosure and reporting obligations regarding their existing stockpiles of conflict minerals? If not, how can we address existing stockpiles of conflict minerals? Should our rules permit a transition period so that issuers would not have to provide any conflict minerals

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disclosure or report regarding any conflict mineral extracted before the date on which our rules are adopted? Alternatively, would the reasonable country of origin inquiry standard for determining the origin of the conflict minerals and the due diligence standard or guidance for determining the source and chain of custody of the conflict minerals that originated in the DRC countries accomplish the same goal? For example, should issuers be required to inquire about the origin of their conflict minerals extracted before the date on which our rules are adopted? As another example, should issuers file a Conflict Minerals Report regarding conflict minerals that originated in the DRC countries before the date on which our rules are adopted?

Minerals in the possession of the issuer before the effective date of the rules should be exempt from the rules' requirements and similarly, minerals extracted before the effective date of the rules should be exempted from the rules.

Materiality Threshold

Q62. Should there be a de minimis threshold in our rules based on the amount of conflict minerals used by issuers in a particular product or in their overall enterprise? If so, what would be a proper threshold amount? Would this be consistent with the Conflict Minerals Provision?

We believe the rules should include a *de minimis* threshold in the rules. Please see our response to Q1. As regards companies engaged in gold mining we would propose that a *de minimis* level of 1% of consolidated total production costs would be appropriate. The WGC would happily discuss alternative models for a *de minimis* threshold, potentially linked to, for example, humanitarian-related or public interest uses.

Recycled and Scrap Minerals

Q63. Should our rules, as proposed, include an alternative approach for conflict minerals from recycled or scrap sources as proposed? If so, should that approach permit issuers with necessary conflict minerals to classify those minerals as DRC conflict free, as proposed? Should we require, as proposed, issuers using conflict minerals from recycled or scrap sources to furnish a Conflict Minerals Report, including a certified independent private sector audit, disclosing that their conflict minerals are from these sources? If not, why not?

We believe an alternative approach for so-called conflict minerals from re-cycled or scrap sources is appropriate, and that issuers should be able to describe such minerals as "conflict free". We also believe that issuers should be able to describe minerals as conflict free, and use the alternative approach, in cases where the issuer reasonably believes that the majority of the minerals used in the product are from re-cycled or scrap sources or a combination of re-cycled, scrap sources and newly-mined gold. We believe this clarification is necessary because it is likely to be impossible to obtain 100 percent surety that the gold used in a product is exclusively from re-cycled or scrap sources. With respect to the reasonable country of origin inquiry, we believe that the rules should specify that the focus of the inquiry should be on the most recent source of the re-cycled or scrap material, (*i.e.*, the inquiry should not seek to determine previous origins down the chain). Issuers using re-cycled or scrap material should not be required to produce a Conflict Minerals Report.

Q64. Instead, should our rules 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 issuers should be required to conduct a reasonable country of origin inquiry in order to determine whether their minerals are from re-cycled or scrap sources. Where the reasonable country of origin inquiry concludes the minerals are indeed from recycled or scrap sources we do not believe an exhibit would be necessary.

Q65. Should our rules, as proposed, require that issuers use due diligence in determining whether their conflict minerals are from recycled or scrap sources as proposed and file a Conflict Minerals Report including an independent private sector audit of that report? If so, should our rules prescribe the due diligence required? If our rules should not require due diligence, should our rules require any alternative standard or guidance? If so, what standard or guidance? Should our rules define what constitutes recycled or scrap conflict minerals? If so, what would be an appropriate definition?

Issuers that determine that their minerals are sourced from scrap or re-cycled sources should not be required to produce a Conflict Minerals Report. This is not a requirement of Section 1502 and would only result in higher costs for issuers and consumers of their products.

Q67. Is our alternative approach to recycled and scrap minerals appropriate? Is there a significant risk that conflict minerals that are not "DRC conflict free" may be inappropriately processed and "recycled" so as to take advantage of this alternate approach?

As noted in our responses to Q63 and 65, we support an alternative approach for re-cycled and scrap minerals but do not believe that a Conflict Minerals Report or an independent audit should be required if an issuer determines that the minerals are conflict free.

Termination, Revisions, and Waivers

Q69. Should our rules address specifically the Conflict Minerals Provision's revision, waiver, or termination requirements? If so, how should our rules address this?

We believe that the SEC's rules should include the termination, revision and waiver provisions found in Section 1502 so that the rules are complete, and for the avoidance of doubt regarding the SEC's authority to adopt rules to give effect to these specific provisions.

Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Q70. We request comment on whether the proposed rules, if adopted, would promote efficiency, competition, and capital formation or have an impact or burden on competition. Commentators are requested to provide empirical data and other factual support for their view, if possible.

We believe that the rules will impose a burden on competition because of the costs incurred by issuers to comply with the rules.

We are also concerned that the Proposed Rules should not discourage the sourcing of responsibly mined gold from the "DRC Countries" (or from the wider African continent), discourage legitimate investment in the region, or encourage substitution of gold with other minerals not covered by the Proposed Rules. We have set out in a supplementary submission[21], the potential economic value at risk should responsibly-produced African gold be stigmatized by the Proposed Rules, together with a number of further recommendations which we believe would minimize this risk. We would respectfully ask the Commission to give serious consideration to these recommendations due to the significant economic impact we believe will result from the Proposed Rules as currently drafted.

* * *

On behalf of the WGC and its members, we very much appreciate your attention to these comments. We would welcome any opportunity to assist the Commission and its staff in your consideration of rules pursuant to Section 1502. Please do not hesitate to contact the undersigned at the number below if you have any questions regarding this submission.
Yours sincerely

Aram Shishmanian
Chief Executive Officer

cc: Mary L. Schapiro, Chairman
Kathleen L. Casey, Commissioner
Elisse B. Walter, Commissioner
Luis A. Aguilar, Commissioner
Troy A. Paredes, Commissioner
Meredith Cross, Director, Division of Corporation Finance
Felicia Kung, Chief, Office of Rulemaking, Division of Corporation Finance
Steven Hearne, Special Counsel, Division of Corporation Finance
John Fieldsend, Special Counsel, Division of Corporation Finance

[21] Responsibly- Produced African Gold: The Value at Risk. The unintended consequences of the Proposed Rules,

ATTACHMENT A

List of WGC Member Companies

Agnico-Eagle Mines Limited
Alamos Gold Inc.
AngloGold Ashanti
Barrick Gold Corporation
Buenaventura
China Gold Group Corporation
Coeur d'Alene Mines Corporation
Eldorado Gold Corporation
Franco-Nevada Corporation
Goldcorp Inc.
Gold Fields Limited
Golden Star Resources Limited
Hutti Gold Mines Co Limited
IAMGOLD Corporation
Kinross Gold Corporation
Mitsubishi Materials Corporation
New Gold Inc.
Newmont Mining Corporation
Primero Mining Corporation
Royal Gold Inc.
Yamana Gold Inc.

WORLD GOLD COUNCIL

Elizabeth. M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington
DC 20549-1090

28 February 2011

Re: Release No. 34-63547. Proposed Rules to Implement Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Ms. Murphy

This letter is submitted on behalf of the World Gold Council ("WGC") in response to the Securities and Exchange Commission's ("SEC" or "Commission") publication of Proposed Rules to implement Section 1502 ("Section 1502") of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[1] It provides supplementary evidence in relation to what we believe are some of the unintended consequences of the Proposed Rules in respect of their potential economic impact on Tanzania and Ghana. The attached supplementary evidence should be read in conjunction with our main submission also dated 28 February 2011.

We appreciate the Commission's solicitation of comments on this important legislation.

Yours sincerely

Aram Shishmanian
Chief Executive Officer

Cc: Mary L. Schapiro, Chairman
Kathleen L. Casey, Commissioner
Elisse B. Walter, Commissioner
Luis A. Aguilar, Commissioner
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[1] SEC Release No. 34-63547, 75 FR 80948 (hereafter the "Proposing Release" or "Release").

Responsibly-Produced African Gold: The Value at Risk

The unintended consequences of the Proposed Rules

Supplement to the World Gold Council's Response to the Securities and Exchange Commission's Request for Comments in Release No. 34-63547

1. Summary

This submission is a supplement to the World Gold Council's (WGC) main submission dated 28th February 2011. It sets out the role gold mining plays in the economic development of a so-called "DRC country" (Tanzania) and elsewhere in Africa (through an assessment of Ghana). It identifies and quantifies the value at risk which may materialise should responsibly-produced gold be stigmatized as a result of the Proposed Rules. In particular, this submission provides the Commission with information relevant to the costs of the Proposed Rules.

The WGC believes the Commission should focus on the costs of the Proposed Rules in order to properly evaluate their effects. In this regard, we note the Commission's cost estimates appear to be based only on gold mined in the Democratic Republic of Congo[1] (DRC) and are focused solely on the estimated costs for issuers subject to the rules. While important, this evaluation overlooks the fact that the rules as currently drafted will have effects which extend well beyond the DRC, imposing significant costs on the populations of neighbouring countries and potentially the wider African Continent.

We believe that as drafted, the Proposed Rules may cause perverse and unintended consequences as issuers may avoid sourcing gold from the so-called "DRC countries" without regard to whether the gold being sourced is actually from a conflict area and used to finance or benefit armed groups. Such a pullback by issuers from the region will result in grave economic harm and will, in particular, penalise Tanzania, as the largest gold producer in the region, without contributing to the realisation of the policy objectives of Section 1502. For example, export earnings from gold are greater than the combined bilateral and multilateral aid flows in to Tanzania each year. The Proposed Rules could put this at risk.

This submission, therefore, proposes amendments which would clarify the process around gold which can be shown to have been mined in Tanzania, as well as ensuring that gold is only determined to be a conflict mineral when it is shown to have directly or indirectly financed or benefited armed conflict. These proposals will ensure that the unintended consequences identified do not materialise and will support the role of responsibly-produced gold in underpinning economic development and growth in Africa.

Our proposals are set out in Section 8 of this submission.

2. Purpose of this Submission

The World Gold Council (WGC) submitted comments on the Proposed Rules on 28 February 2011. As part of our submission, we highlighted the potential for the Proposed Rules to result in a number of unintended consequences including potential implications for the economy of Tanzania and discouraging foreign direct investment by responsible international companies. We note, in particular, the recent comments by U.S. Deputy Assistant Secretary of State,

[1] See the Commission's estimate of the number of issuers potentially subject to the Proposed Rules, at Release No. 34-63547, p.73 and note 171.

Robert Cekuta, when he announced a fund to encourage local and international actors to continue to operate in and source minerals from the DRC. He warned that:

'*There is no value in incentivising (these) actors to abandon the DRC as a source of minerals; doing so could potentially lead to even more dire consequences.' He went on to stress that 'conflict free' should 'not evolve in to DRC free'*.

Equally "DRC Conflict Free" should not evolve into "*Tanzania Free*" or "*Africa Free*".

We are certain that, as the rules are finalised, the Commission will wish to minimise such consequences, which were clearly not intended by the promoters of Section 1502. However, the risk of stigmatizing gold produced in a responsible manner by companies operating in Africa is, in our view, significant. Such stigmatisation could result in economic issues for the countries in which gold is produced, and for social development and poverty alleviation.

This paper provides an economic analysis of the potential unintended consequences of stigmatizing responsibly-produced African gold, together with a number of recommendations through which this risk may be minimised.

3. Dodd-Frank Act Section 1502

Section 1502 of the Dodd-Frank Act relates to so-called "conflict minerals" with gold being defined as one such mineral. Section 1502 calls for a number of building blocks to be put in place to ensure gold is not directly or indirectly financing or benefiting armed groups in the DRC or an adjoining country. These include:

- Regulations to be put in place by means of a rule promulgated by the Commission
- Audit standards as determined by the Comptroller General of the US
- A map of mineral-rich zones, trade routes and areas under the control of armed groups to be defined by the Secretary of State

This will arguably be the first attempt at limiting flows of a commodity through the use of legislation, which by its very nature has a global reach. The complexities of the gold supply chain, especially as they relate to 'scrap' or recycled gold, which accounts for some 40% of annual supply, and the fragmented and often unregulated supply of artisanal and small-scale mined gold, are such that there may be significant uncertainties at each stage in the chain as to the provenance of the gold. Under the Proposed Rules these uncertainties will have to be addressed by actors within the supply chain who will be unaware of the complexities further up the supply chain.

We are very concerned that at any point in the supply chain for gold, an actor may determine that the uncertainties in the process, the costs of due diligence and audit, or the reputational risks of defining their product or a constituent part as containing a so-called "DRC Conflict Mineral" are too great to bear. The gold market is sufficiently liquid, especially given the level of stocks held to make it relatively easy for manufacturers to switch their sources of supply.

This could lead in our view to the stigmatisation of responsibly-produced gold which in turn could result in:

- Substitution with minerals not covered by the regulation (e.g. copper replacing gold in the electronics industry, or platinum replacing gold in the jewellery industry)

- Substitution of gold with gold from countries outside of those covered by the Proposed Rules; and because of consumer confusion,
- Substitution of gold with gold produced from outside of Africa

We do not believe that any of these outcomes was intended by the promoters of Section 1502 of the Dodd-Frank Act.

4. WGC Members and their Operations

The WGC comprises twenty-one (21) gold mining companies. Our member companies account for approximately sixty (60) percent of global corporate gold mining production. The six largest producers in the world by tonnage produced in 2010 are WGC member companies. Our members engage only in formal sector, commercial mining and are not engaged in the artisanal and small scale mining that is the focus of concern over "conflict minerals" in the DRC.[2]

Our members currently mine gold in nine countries across Africa, with development projects or exploration in a further seven. Of these, two member companies operate in Tanzania, and one is engaged in exploration and pre-feasibility evaluation of projects in the DRC itself.

All WGC members currently operating in Africa are listed on the NYSE.

5. The Economic Value of Gold to Africa

Gold plays a vital role in supporting the economic development and thereby the stability of several developing countries. Nowhere is this more important than in Africa, where gold mining contributes significant foreign direct investment, export earnings, tax revenues, infrastructure enhancement, employment and the strengthening of the skills base. The levels of economic contribution provided by gold mining are considerably greater than for the other so-called "conflict minerals".

In 2009, the global mine production of gold was 2,752 tonnes. Of this, around 500 tonnes was produced by African countries, with 280 tonnes coming from countries other than South Africa. At an average price of gold of $972 per ounce, gold produced in Africa (excluding the DRC) during 2009 was worth nearly $15.5bn. This is equivalent to around 1.6% of GDP for the whole of the African continent and just under 13% of aid (including debt relief) provided to Africa from OECD countries.

The ability of many such countries to meet the Millennium Development Goals (MDGs) as well as their aspirations for material progress for their populations is linked to the revenue the countries generate from commercial gold mining. Stigmatizing responsibly-produced gold from formal sector, commercial mining operations in Africa will have an adverse impact on the economies of developing nations and the achievement of the MDGs.

6. The Economic Value of Gold to Tanzania

By nature of its international border with the DRC, Tanzania is considered to be a so-called "DRC country". Whilst in recent years there has been a lot of focus on the possible attribution of gold mined in the DRC to Uganda or Sudan, Tanzania has not, to date, been a major focus of concern. This section sets out the importance of legitimate commercial gold mining to Tanzania, and the value at risk should responsibly-produced gold be stigmatised as an unintended consequence of the Proposed Rules.

[2] Commercial mining is distinguished from artisanal mining, which accounts for approximately 15% of total annual output.

6.1 Context

The World Bank reports[3] that Tanzania has one of the strongest track records of political stability in Africa since becoming independent in 1961. Indeed, in all aspects of governance, Tanzania is deemed to be considerably more advanced than the average in sub-Sahara Africa[4]. This is supported by accepted indicators of conflict which show the lowest level of conflict in the country since 1993.[5] The country is well advanced in seeking validation of its compliance with the requirements of the Extractive Industries Transparency Initiative as a result of a close collaboration between the Government, civil society and the mining sector.

Economic growth has ranged between 5 and 7 % per annum since 2000[6], underpinned by enlightened macroeconomic policies, market-oriented reforms, debt relief and increasing success in attracting foreign direct investment. Even during the global financial crisis, the economy of Tanzania grew by 6%[7].

As the most valuable of its exports, gold plays an important role in the economic growth of Tanzania which also contributes to the political stability of the country.

6.2 Role of Gold Mining

There are currently three quoted companies engaged in gold mining in Tanzania of which two are members of the WGC. African Barrick Gold has four mines with AngloGold Ashanti owning a further mine. Both companies also have significant exploration and development projects in the country.

Gold production[8] from Tanzania rose from 40.9 tonnes in 2009 to 44.6 tonnes in 2010. This represents 1.7% of global production of gold in 2010 and over 61% of the gold production in 2010 from the so-called "DRC countries" as defined by the Dodd-Frank Act. In 2010, WGC members produced around 75% of the gold produced in Tanzania. With the inclusion of the other large scale mining company[9], this figure rises to 84%.

At an average gold price for 2010 of $1225 per ounce, the value of gold produced in Tanzania was $1.77bn, with the value of gold produced by WGC members representing $1.3bn. Clearly production in Tanzania is financially important to WGC members, but it is economically vital for Tanzania.

In 2009, the WGC reported on the results of a life-cycle assessment of Tanzania Gold Production. The underlying data was also published by the World Bank, United Nations Conference on Trade and Development (UNCTAD) and ICMM. The following sections draw upon information in these reports[10], updated with more recent economic data where available.

The conclusion of this research is that gold mining is critical to the economic success of Tanzania.

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[3] World Bank – Tanzania: Country Brief

[4] World Bank – Worldwide Governance Indicators 2010

[5] Heidelberg conflict barometer 2010

[6] IMF Country Report No. 09/179

[7] The United Republic of Tanzania - Economic Survey 2009

[8] Source: GFMS

[9] Resolute Mining – a non-WGC member

[10] The Golden Building Block, WGC & ICMM

6.3 Foreign Direct Investment (FDI)

Since reforms implemented in the mid-1990s, gold mining has made a substantial contribution to FDI in Tanzania. Between 2000 and 2008, overall FDI in Tanzania rose from $2.78bn to $5.94bn with over $2bn of this increase being due to mining investments. Much of this was associated with the large-scale, upfront capital investment needed to establish new mines. Whilst many of the mines are currently in production, exploration and new projects will bring further FDI thereby providing the basis for further economic growth.

In addition to investment directly in mining operations, African Barrick Gold has invested over $100m in extending the national electricity grid to its mines, thereby enabling neighbouring villages to access electricity for the first time. These assets were subsequently handed over to TANESCO. Investment on this scale provides a substantial economic uplift for countries such as Tanzania.

Stigmatizing gold production from Tanzania, would lead to issuers avoiding gold altogether from what is a peaceful and well-governed country. This could place future FDI at significant risk.

6.4 Exports

Between 1999 and 2008, Tanzania's earnings from non-traditional exports rose from $240m to $2,800m, with gold being one of the most dynamic components of these exports. More recently, the Tanzanian Government[11] itself stated that in 2009, "*non-traditional goods, particularly gold continued to contribute large proportion of merchandise exports*". This was supported by the IMF[12] which stated that after the impact of the global financial crisis, export growth began to recover in the 3rd quarter of 2009 led by gold exports.

The Tanzanian Government[13] reported the value of mineral exports had increased to $1,148m in 2009 from $995.5m in 2008, equivalent to an increase of 12.0%. The increase was mainly attributed to exports of gold which accounted for 96.5 % of all minerals exported. The value of gold exports increased from $932.4m in 2008 to $1,076.1m in 2009, equivalent to an increase of 15.4%

To put this into context, the foreign exchange earnings generated through gold mining in Tanzania during this period are:

- Approximately $750m per annum
- Greater than the combined bilateral and multilateral aid flows into the country each year
- 700 fold greater than the earnings from the export of coffee
- 10 times greater than the debt relief Tanzania received in 2005 as a result of its HIPC status

In future, it is estimated that export earnings are likely to rise to around $1.4bn per annum in the period 2012 to 2017.

Gold is therefore immensely important to the foreign exchange earnings of Tanzania, and any significant risk to this would have potentially devastating impacts on the economy of the country.

[11] The United Republic of Tanzania – Economic Survey 2009

[12] IMF Country Report No. 10/173

[13] The United Republic of Tanzania – Economic Survey 2009

6.5 **Tax Revenue**

The tax revenue from the four mines operated by WGC members between 2000 and 2007 has been estimated to be between $76m and $100m per annum. At the end of that period, the IMF[14] indicated the Tanzania Government's tax revenue to be $2,486m which suggests gold mining contributes between 3.1% and 4.3% of tax revenue.

To put this into context, the tax revenue generated through gold mining in Tanzania is:

- Approximately 33% of government receipts from import duties
- Greater than receipts from debt relief under its HIPC status
- Equivalent to the annual receipts from MRDI debt relief.

It is also estimated that over the lifetime of the five[15] gold mines operated by WGC members in Tanzania, total tax revenues will be around $3.5bn, with annual tax revenues of around $280m in 2017.

In December 2010, the IMF[16] stated:

"Government revenues from the mining sector are increasing fast and significant revenues are expected to be allocated during the next 5-7 years as most of the large mines have reached or are approaching their breakeven point"

As with foreign exchange earnings, gold is immensely important to the tax revenue of Tanzania, and any risk to this would have a very damaging effect on the economy of the country, its ability to finance key public services and/or to achieve a number of the MDGs.

6.6 **Employment**

In 2009, gold mining in Tanzania was estimated to provide employment for around 11,000 Tanzanians and an additional 1,100 expatriate workers as the construction of mines reached its peak. In 2010, the figures are estimated to level out at between 7000 and 8000 local employees and 450 expatriate workers.

When employment in industries associated with or which service the mining industry is taken into account, these figures rise to approximately 20,000 local employees[17]

The average wage rate of Tanzanian workers employed in the gold mining industry is high when compared with other local industries at approximately $5,000 to $7,000 per annum rising to $14,000 with increasing skill levels.

It is worth noting that Tanzania has an official unemployment rate of 11%[18]. Whilst gold mining does not provide direct employment on the scale associated with, for example, agriculture, nevertheless the scale of the industry, its local procurement spend and the relatively high levels of remuneration in the industry are such that any action which led to a reduced demand for gold from legitimate mines in Tanzania would increase levels of unemployment.

[14] IMF Country Report No. 09/179

[15] African Barrick Gold's Buzwagi mine became operational in 2009

[16] IMF Country Report No. 10/351

[17] The Golden Building Block , WGC & ICMM

[18] The United Republic of Tanzania – Economic Survey 2009

6.7 **Potential Implications of the Proposed Rules for Tanzania**

The Proposed Rules are likely to have both direct and indirect implications for gold mining in Tanzania.

The direct implications are associated with removal of so-called "DRC Conflict Gold" arising from the DRC itself and which is transported through Tanzania. As set out in our main submission to the Commission, we **strongly support** the removal of gold that directly or indirectly finances or benefits armed conflict from the global supply chain.

The indirect implications of the rules remain of significant concern however. It is highly likely that, given the uncertainties associated with the implementation of the rules, the lack of experience in auditing what is a highly complex supply chain, and the cost of rule compliance, issuers may decide to reject gold from Tanzania. In our view, the economic implications of such actions for Tanzania would be significant.

For example, a 10% reduction in demand for gold (or an insistence on an equivalent discount by purchasers to compensate for compliance costs and legal and reputational risks) from Tanzania would result in:

- $75m reduction in export earnings from gold per annum
- A reduction of around $200m in FDI due to a reluctance to develop projects in a country with what would then be over-capacity
- $10m reduction in tax revenue due to what would then be over capacity
- A reduction in the direct and indirect employment of approximately 2000 people

Clearly should a greater number of issuers decide to reject gold from Tanzania, the impact on the economic position of the country would be significantly worse.

7. The Economic Value of Gold to Ghana

Ghana is not one of the countries defined by section 1502 of the Dodd-Frank Act as a so-called "DRC Country". That said, we believe there is a risk that the Proposed Rules will stigmatise gold produced in what is a peaceful country along with that produced from other countries in Africa, from South Africa, to Mali and Burkina Faso to Mauritania,

Formerly known as the Gold Coast, Ghana is a peaceful nation which has long depended on gold for its economic prosperity. In addition to historically important mines such as Obuasi (which is more than a hundred years old), the last decade has seen a surge in investment in the industry. The conflict in the DRC is a long way from Ghana and yet the complexity of the gold supply chain, uncertainty regarding the compliance costs of the Proposed Rules, and the naming of all gold as a "conflict mineral" risks stigmatizing gold from this country in the eyes of consumers as it may from all other gold producing countries in Africa.

7.1 **Context**

When he visited Ghana in July 2009, President Obama said

"*Ghana has worked hard to put democracy on a firmer footing, with repeated peaceful transfers of power even in the wake of closely contested elections…. And with improved governance and an emerging civil society, Ghana's economy has shown impressive rates of growth*"

Indeed, in all aspects of governance, Ghana is deemed to be on a par with countries such as Brazil[19]. This is supported by accepted indicators of conflict which view the stability of Ghana to be similar to that experienced by Brazil and South Africa.[20]

Since 2009, the economy has shown strong signs of stabilization, while weathering the impact of the global financial crisis. Both fiscal and current account deficits were significantly reduced, the exchange rate was stabilized and consumer price inflation decelerated to single digit levels.

7.2 Role of Gold Mining

Behind only South Africa, Ghana produces more gold than any other country in Africa. In 2010[21], it is estimated that Ghana produced 92 tonnes of gold, which equates to 3.5% of global production. At an average gold price for 2010 of $1225 per ounce, the value of gold produced in Ghana was $3.6bn.

There are six WGC members with operational mines in Ghana: AngloGold Ashanti, Golden Star, Gold Fields, IAMGold, Kinross and Newmont. The WGC members are responsible for around 87 tonnes of the production in 2009 accounting for over 90% of the gold produced. The value of the gold produced by WGC members in 2009 is around $3.3bn.

The economic impact of gold mining stretches well beyond mining itself into ancillary industries. For example, in 2010, Gold Fields reported a $0.8bn[22] spend on procurement in relation to its mines in Ghana.

As is the case in Tanzania, gold mining is vital to the economy of Ghana.

7.3 Foreign Direct Investment

Stigmatizing African gold production could lead to issuers avoiding gold altogether from countries such as Ghana which are outside of the so-called “DRC countries”. This could place future FDI at significant risk in a country whose prosperity is closely linked with gold mining.

In 2009, Newmont reported investment in goods and services for its Ahafo mine of $164m at a national level, with a further $6m in the locality of the mine. Taken in conjunction with other factors such as tax revenue and community investment, Newmont invested over $240m in Ahafo in 2009.

7.4 Exports

The ICMM[23] reported that gold has represented between 30% and 45% of all exports from the country since 1991 when it overtook cocoa. The Ghana Chamber of Mines reports this figure was around 48% in 2009 and that gold resulted in $2.82bn of export earnings in the same year. The IMF[24] forecast that by 2014, gold mining will contribute around $3.8bn per annum to Ghana’s balance of payments. The Ghanaian budget[25] for 2010 forecast a 14.5% increase in earnings from gold exports. To put this into context, the projected

[19] World Bank – Worldwide Governance Indicators 2010

[20] Fund for Peace Failed States Index 2010

[21] GFMS Survey 2010 – Update 2

[22] Gold Fields 2010 Sustainability Report

[23] ICMM – Ghana Case Study: The Challenge of Mineral Wealth, June 2007

[24] IMF country report 09/256

[25] Republic of Ghana Budget Statement and Economic Policy for 2010, section 207

contribution to the balance of payments[26] generated through the export of gold from Ghana in 2014 will be:

- Double that received from cocoa
- Greater than that from petroleum exports
- Greater than the MDRI debt relief in 2006

Gold therefore remains a critical export for Ghana and is likely to increase in importance in the future. Any risk to this would have very damaging impacts on the economy of the country, its ability to finance key public services and to achieve a number of the MDGs.

7.5 Tax Revenue

The total tax revenue[27] from gold mining during 2009 was $280m representing around 15% of all tax revenue in Ghana. Of this, the royalty[28] payments from gold mining totalled $71m in 2009, representing 97% of all mineral royalty payments received during the year.

Ghana was one of the first countries to be recognised as a 'compliant country' by the Extractive Industries Transparency Initiative (EITI). It has produced a number of EITI reconciliation reports. The most recent of these highlighted that the three WGC members operating in the country (AngloGold Ashanti, Gold Fields and Newmont) contributed over $50m in tax revenue in 2008[29].

7.6 Employment

The Ghanaian Government estimates that over 12,000 Ghanaians were directly employed in gold mining at the end of 2009, representing approximately 98% of the workforce employed in the country's gold mines.

In 2007, AngloGold Ashanti's operations in Obuasi, Ghana employed 6,763 workers[30] with approximately 50,000 people employed either directly or indirectly in the area as a result of AngloGold Ashanti's operations. AngloGold Ashanti was identified as the preferred employer in the region due to the high salary levels paid and benefits offered. In 2007, over $30m was paid in salaries and benefits to AngloGold Ashanti employees at Obuasi.

In 2009, Newmont employed 1766 workers at Ahafo of which around 95% were from Ghana itself. The investment in salaries for the Ghanaian workforce was over $32m in 2009.

In 2010, Gold Fields employed over 2,500 staff in Ghana. The investment in salaries and contractors to support the operations was around $200m in 2010.

Whilst gold mining does not provide direct employment on the scale associated with cocoa production for example, with an unemployment rate of around 10.4%[31], any action which led to lower levels of employment in gold mining in Ghana would increase levels of unemployment.

[26] IMF country report 09/256

[27] Ghana Chamber of Mines

[28] Ghana Chamber of Mines

[29] Report on the Aggregation/Reconciliation of Mining Sector Payments and Receipts – 2008, Ghana Extractive industry Initiative

[30] The Challenge of using mineral wealth: Ghana – A case study, ICMM

[31] World Bank figures

7.7 **The Potential Implications of the Proposed Rules for Ghana**

Designating gold as a "conflict mineral" will lead to confusion amongst both issuers and consumers. Such confusion may result in the stigmatisation of gold from parts of Africa entirely separated from the conflict in the DRC. The Proposed Rules may, therefore, lead to unintended consequences for Ghana and its economy.

Ghana is not one of the so-called "DRC countries". However, whilst an adverse impact is less certain and direct than for Tanzania, we believe there is a significant risk that, given the uncertainties associated with the implementation of the rules, the lack of experience in auditing what is a highly complex supply chain, and the potential reputational issues associated with sourcing gold from Africa, issuers may decide to reject gold from countries such as Ghana. The economic implications of such actions for Ghana and other gold-producing countries in Africa (outside of the DRC) would be significant.

For example, a 10% reduction in demand for gold from Ghana would result in:

- $380m reduction in export earnings from gold per annum
- $28m reduction in tax revenue due to what would then be over capacity
- A reduction in the direct and indirect employment of around 1500 people

Clearly should a greater number of issuers decide to reject gold from Ghana, the impact on the economic position of the country would be significantly worse.

8. Recommendations to the Securities and Exchange Commission

As stated in our submission of 28 February 2011, the WGC firmly supports Section 1502's humanitarian goals. The WGC and its member companies are totally opposed to activities which finance or benefit armed conflict and the extreme levels of violence which contribute to abuses of human rights.

In view of the likely economic impact of the Proposed Rules, we believe the Commission should reassess a number of the key aspects contained in the Proposed Rules to ensure that unintended economic consequences do not materialise.

With this in mind we believe the Commission should consider the following suggested changes:

- **Gold originating in the DRC**

In 2009, Global Witness[32] recommended to the US:

"The U.S. should require companies that are importing products that contain tin ore, coltan, gold and wolframite extracted in eastern D.R.C. to disclose precisely from which mines these minerals are sourced, when they were extracted, and the identity of their suppliers."

The clear focus of Section 1502 is rightly on ensuring that gold originating (taken to mean mined or extracted) in the DRC does not, directly or indirectly, finance or benefit armed groups engaged in the conflict.

We strongly support the requirement that where an issuer determines, through the "reasonable country of origin enquiry", that gold within their product may have been mined or extracted from within the DRC, a "Conflict Minerals Report" is required. In producing a "Conflict Minerals Report", the

[32] Global Witness - U.S. policy recommendations for combating corruption and promoting sound governance of natural resources: actions for the first 100 days of the new administration, February 2009

issuer should be required to demonstrate that the gold has not directly or indirectly, financed or benefitted armed groups engaged in the conflict.

In this context we believe the Commission should ensure the Proposed Rules are clear that:

- Where the due diligence required in producing the "Conflict Minerals Report" concludes the gold **may** have directly or indirectly, financed or benefitted armed groups engaged in the conflict, the gold should be classified as "DRC Conflict Gold".

- Where the due diligence required in producing the "Conflict Minerals Report" concludes the gold **did not** directly or indirectly, finance or benefit armed groups engaged in the conflict, the gold should be classified as "DRC Conflict-Free"

- **Gold originating in Tanzania**

  We believe the original intent of Section 1502 was to prevent gold mined or extracted within the DRC from directly or indirectly, financing or benefiting armed groups engaged in the conflict.

  The extension of Section 1502 to the so-called "DRC countries" was, we believe, intended to ensure that gold mined or extracted in the DRC could not be transported via adjacent countries and claimed as a legitimate commodity. This would be in keeping with both the requirement placed on the U.S. State Department to periodically produce a "conflict minerals map" of the region and the further proposal from Global Witness in their 2009 report where they suggest the US:

  "*calls upon DRC's neighbours (especially Rwanda, Burundi, Uganda and Tanzania) to halt illicit imports of minerals from eastern DRC"*

  We do not believe the original intent of Section 1502 was to restrict gold mined in Tanzania but rather gold mined or extracted from within the DRC being transported through Tanzania. In this context, the word "originating" used in Section 1502 therefore can be interpreted to mean "mined" or "purchased".

  We therefore propose the following amendment to the Proposed Rules:

  - where the "reasonable country of origin enquiry" concludes that the gold within an issuer's product may have purchased, but not necessarily mined or extracted in Tanzania, a "Conflict Minerals Report" would be required.

  - where the "reasonable country of origin enquiry" concludes that the gold within an issuer's product was mined or extracted in Tanzania, the gold contained within an issuer's product would be determined to be "DRC Conflict-Free" and a "Conflict Minerals Report" would be not required

  An appropriate mechanism (e.g. a supply chain audit or a chain of custody) between the mine and the refinery would provide the reassurance that gold arriving at a refinery was indeed mined or extracted in Tanzania as opposed to being mined or extracted in the DRC and then transported into Tanzania for sale.

- **Gold originating from outside the so-called ”DRC countries”**
  Responsibly-produced gold emanating outside of the so-called ”DRC countries” should not be stigmatised as “DRC conflict minerals” from the outset due to the economic implications which may result.

  We therefore propose the following amendment to the Proposed Rules:

  - The Commission should ensure the phrase “conflict mineral” is only assigned at the point at which the due diligence process determines it to be so.

  - Where the “reasonable country of origin enquiry” concludes that the gold contained in the issuer’s product was mined or extracted outside of the DRC Countries, the gold remains as “DRC Conflict-Free”.

In conclusion, the WGC fully support efforts to prevent gold being used to directly or indirectly benefit or finance armed groups involved in the conflict in the DRC. We believe the Commission’s rules should:

- significantly limit the ability of those who illegally mine gold in the DRC to find a market for their product; and
- ensure responsibly-produced gold from formal commercial mines in Tanzania, Ghana and elsewhere in Africa is afforded the same status as gold produced in the US.

We believe these measures will ensure that the potential economic consequences outlined above will not materialise.