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March 17, 2017

Brent J. Fields
Secretary
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Acting Chairman Piwowar's January 31, 2017, statement on the Commission's Conflict Minerals Rule

Dear Mr. Fields:

I write on behalf of the Sustainability Accounting Standards Board (SASB), an independent 501(c)(3) nonprofit organization that issues sustainability accounting standards for the disclosure of material sustainability information in SEC filings. SASB's provisional standards—developed following a robust due process with significant market input—are designed to be evidence-based, cost-effective and work within the framework of the U.S. securities laws. They help registrants effectively disclose material sustainability-related information and comply with regulatory obligations. SASB's provisional standards are available for 79 industries. By issuing standards that help companies provide investors with decision-useful disclosure on material sustainability-related matters, SASB supports the SEC's mission to protect investors; maintain fair, orderly, and efficient markets; and, facilitate capital formation.

Thank you for the opportunity to comment on whether the 2014 conflict minerals guidance is still appropriate and whether any additional relief is appropriate in the interim. SASB believes that line item requirements—including the 2014 conflict minerals rule—are less preferable than the existing principles-based approach, reflected by Item 303 of Regulation S-K. This is because sustainability issues are likely not material for all companies; when they are material, they manifest in unique ways and thus require industry-specific disclosures. Requiring line items results in a corporate disclosure burden and a large volume of information that is immaterial to investors. In the words of the Supreme Court, this serves to “bury shareholders in an avalanche of trivial information—a result that is hardly conducive to informed decision making.”¹

Instead of line item requirements, SASB believes in applying the materiality standard to determine what sustainability information (including conflict minerals disclosures) should be disclosed by companies to investors. Materiality, as defined by the courts, recognizes that some information is important to investors in making investment and voting decisions, while other information is not. This concept is applied pursuant to the federal securities laws, including the Securities Act of 1933 and the Securities Exchange Act of 1934 and regulations thereunder, as interpreted and enforced by the SEC. Item 303 of Regulation S-K states that MD&A “shall focus specifically on material events and uncertainties known to management that would cause

¹ TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976).

reported financial information not to be necessarily indicative of future operating results or of future financial condition.” SASB believes disclosure on conflict minerals—like all environmental, social, and governance topics—is compelled if a company determines that the topic is likely to impact its financial condition or operating performance. To make this determination, companies should consider the two-part test² that the SEC has established for companies to determine whether known trends, demands, commitments, events, or uncertainties should be disclosed in the MD&A section of Form 10-K. The determination of materiality and disclosure obligations for a given company is the responsibility of the corporation, consistent with the Supreme Court’s explanation that the determination of materiality is an “inherently fact-specific finding.”³

In Appendix A of this letter, SASB has included a list of industries for which SASB’s standards include disclosure topics related to natural resource scarcity and/or supply chain risks (including risks arising from sourcing minerals from regions of conflict). Our research and consultation with numerous issuers and investors indicated that this topic is likely to be material in these industries. When evaluating the likely materiality of this topic, we look for one or more of the following triggers:

- Physical scarcity of a raw material due to environmental constraints
- Availability constraints of a raw material due to geopolitical issues (such as with certain rare earth mineral)
- Supply chain risks arising from suppliers’ poor management of environmental impacts, such as air emissions, hazardous waste, or water management
- Supply chain impacts arising from suppliers’ poor management of basic labor and/or human rights or mismanaging community interests
- Regulatory risks such as those contained in the 2015 UK Modern Slavery Act, emerging EU Conflict Mineral regulation, Chinese responsible mineral supply chain guidance, etc.

What gives rise to materiality around the procurement of certain minerals in certain industries is not solely the presence of regional conflict in areas from which they are sourced, it is also the scarcity that can result in the supply chain and/or the reliance on a material that cannot be easily or cost-effectively substituted. It comes back to the potential for a scarce resource to affect the ability to produce products and therefore to affect the financial condition or operating performance of the company. (For more information about SASB’s standards development process, and how it is informed by the provisions of the federal securities laws and the regulations of the SEC, please see SASB’s staff bulletin entitled “[Approach to Materiality & Standards Development](#).”)

In a speech last year, SEC Commissioner Michael Piwowar made this point: “It is not sufficient that information merely be useful. Nor is it sufficient that only some investors might find a bit of the information to be important. Rather...the question of materiality ‘is universally agreed as an objective one, involving the significance of an omitted or misrepresented fact to a reasonable investor.’ Thus, materiality is an objective legal standard, not a subjective political one.”⁴

SASB agrees that the objective legal standard of materiality should guide what sustainability disclosures—including those related to conflict minerals—are made in SEC filings. Thank you for the opportunity to comment on this matter.

² In weighing its duty to disclose information in MD&A, management must make two assessments where a trend, demand, commitment, event or uncertainty is known: (1) Is the known trend, demand, commitment, event or uncertainty likely to come to fruition? If management determines that it is not reasonably likely to occur, no disclosure is required, and (2) if management cannot make that determination, it must evaluate objectively the consequences of the known trend, demand, commitment, event, or uncertainty on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on the registrant’s financial condition or results of operations is not reasonably likely to occur.

³ *Matrixx Initiatives, Inc. v. Sircusano*, 131 S.Ct. 1309 (2011).

⁴ “Statement at Open Meeting on Regulation S-K Concept Release,” Commissioner Michael Piwowar, 2016. Available at: <https://www.sec.gov/news/statement/piwowar-statement-041316.html>.

Sincerely,

A handwritten signature in black ink, appearing to read 'JR', with a stylized flourish extending to the left.

Jean Rogers PhD PE
CEO & Founder
Sustainability Accounting Standards Board

Appendix A: Industries and Disclosure Topics

The following is a list of SASB industry standards in which topics related to conflict minerals are included as likely to be material.

Industry	Metric	General Issue Category
Aerospace & Defense	<ul style="list-style-type: none"> RT0201-16 Percentage of tungsten, tin, tantalum, and gold smelters within the supply chain that are verified conflict-free RT0201-17 Discussion of the management of risks associated with the use of critical materials and conflict minerals 	Materials sourcing
Auto Parts	<ul style="list-style-type: none"> TR0102-09 Percentage of tungsten, tin, tantalum, and gold smelters and refiners within the supply chain that are verified conflict-free TR0102-10 Discussion of the management of risks associated with the use of critical materials and conflict minerals 	Materials sourcing
Automobiles	<ul style="list-style-type: none"> TR0101-12 Percentage of tungsten, tin, tantalum, and gold smelters and refiners within the supply chain that are verified conflict-free TR0101-13 Discussion of the management of risks associated with the use of critical materials and conflict minerals 	Materials sourcing
Electrical & Electronic Equipment	<ul style="list-style-type: none"> RT0202-14 Percentage of tungsten, tin, tantalum, and gold smelters within the supply chain that are verified conflict-free RT0202-15 Discussion of the management of risks associated with the use of critical materials and conflict minerals 	Materials sourcing
Electronic Manufacturing Services & Original Design Manufacturing	<ul style="list-style-type: none"> TC0101-11 Percentage of tungsten, tin, tantalum, and gold smelters within the supply chain that are verified conflict-free TC0101-12 Discussion of the management of risks associated with the use of critical materials and conflict minerals 	Materials sourcing
Fuel Cells & Industrial Batteries	<ul style="list-style-type: none"> RR0104-13 Percentage of tungsten, tin, tantalum, and gold smelters within the supply chain that are verified conflict-free RR0104-14 Discussion of the management of risks associated with the use of critical materials and conflict minerals 	Materials sourcing
Hardware	<ul style="list-style-type: none"> TC0103-08 Percentage of tungsten, tin, tantalum, and gold smelters within the supply chain that are verified conflict-free TC0103-09 Discussion of the management of risks associated with the use of critical materials and conflict minerals 	Materials sourcing
Industrial Machinery & Goods	<ul style="list-style-type: none"> RT0203-09 Percentage of tungsten, tin, tantalum, and gold smelters within the supply chain that are verified conflict-free RT0203-10 Discussion of the management of risks associated with the use of critical materials and conflict minerals 	Materials sourcing
Semiconductors	<ul style="list-style-type: none"> TC0201-12 Percentage of tungsten, tin, tantalum, and gold smelters within the supply chain that are verified conflict-free TC0201-13 Discussion of the management of risks associated with use of critical materials and conflict minerals 	Materials sourcing

Solar Energy	<ul style="list-style-type: none"> • RR0102-14 Percentage of tungsten, tin, tantalum, and gold smelters within the supply chain that are verified conflict-free • RR0102-15 Discussion of the management of risks associated with the use of conflict minerals 	Materials sourcing
Wind Energy	<ul style="list-style-type: none"> • RR0103-09 Percentage of tungsten, tin, tantalum, and gold smelters within the supply chain that are verified conflict-free • RR0103-10 Discussion of the management of risks associated with the use of critical materials and conflict minerals 	Materials sourcing

While most disclosure topics related to conflict minerals fall under the category of “Materials Sourcing” or “Supply Chain Management and Materials Sourcing”, in some industries there are also risks related to operating in areas of conflict. In these industries, it may be material to disclose more broadly the risks with operating in regions of active conflict. This is another angle to the broader issue that underscores the need for an industry approach and industry specific metrics, rather than blanket line item disclosure requirements.

Industry	Metric	General Issue Category
Metals & Mining	<ul style="list-style-type: none"> • NR0302-15 (1) Proven and (2) probable reserves in or near areas of conflict • NR0302-17 Discussion of engagement processes and due diligence practices with respect to human rights, indigenous rights, and operation in areas of conflict 	Human rights and community relations
Oil & Gas – Exploration & Production	<ul style="list-style-type: none"> • NR0101-12 (1) Proved and (2) probable reserves in or near areas of conflict • NR0101-14 Discussion of engagement processes and due diligence practices with respect to human rights, indigenous rights, and operation in areas of conflict 	Human rights and community relations