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March 20, 2017

Brett Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

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

Mr. Fields:

On behalf of our listed companies, the NYSE Group, Inc. ("NYSE")[1] appreciates the opportunity to respond to Acting Chairman Piwowar's request for comment on the implementation of the SEC's Conflict Minerals Rule ("CMR"), promulgated under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). Acting Chairman Piwowar requested comment on whether SEC Staff Guidance issued in 2014 on certain aspects of the CMR remains appropriate and whether any additional relief is appropriate. [2]

Background

Section 1502 of Dodd-Frank required the SEC to issue regulations under Section 13 of the Securities Exchange Act of 1934 to require an issuer[3] with "conflict minerals" -- gold, tantalum,

[1] NYSE Group, Inc. is the parent company of New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc., national securities exchanges registered under Section 6 of the Exchange Act. The three markets list the securities of more than 2,400 public companies that may benefit from Commission action on the matters discussed in this comment letter

[2] Public Statement Regarding Reconsideration of Conflict Mineral Rule Implementation, Acting Chairman Michael P. Piwowar (Jan. 31, 2017) available at https://www.sec.gov/news/statement/reconsideration-of-conflict-minerals-rule-implementation.html

[3] The CMR applies to any issuer that files reports with the Commission under Section 13(a) or Section 15(d) of the Exchange Act, including domestic companies, foreign private issuers, and smaller reporting companies, having conflict minerals that are necessary to the functionality or production of a product manufactured or contracted by that registrant to be manufactured.

tin, and tungsten mined from the Democratic Republic of the Congo ("DRC") or an adjoining country -- that are necessary to the functionality or production of a product manufactured or contracted by that public company to investigate and disclose the origin of those conflict minerals. Under the SEC's final rule, a product is "DRC conflict free" if the necessary conflict minerals it includes did not "directly or indirectly finance or benefit armed groups" in the DRC or an adjoining country.[4]

NYSE-Listed Company Comments

NYSE hears from a broad range of our listed companies on the challenges associated with compliance with the CMR. The general consensus of views of our listed companies is that the intent and humanitarian goal of Section 1502 of Dodd-Frank is meritorious. In fact, we have heard from listed companies that as part of their social and charitable endeavors they contribute to assisting those in desperate need, such as afflicted citizens of the Congo. However, it is also the consensus that the implementation of the CMR has resulted in complex and costly regulations that our listed companies do not believe are beneficial to their shareholders. More troubling is that the CMR may actually have unintended, negative impacts on the DRC.

Reduce Complexity of Disclosure

Though the SEC is proficient in fashioning non-financial disclosure requirements,[5] our listed companies believe that the complexity of the CMR disclosure makes it a bridge too far. Unlike other SEC non-financial disclosure requirements, the CMR mandates a cumbersome and costly supply chain sourcing assessment followed by a complex disclosure of the assessment results. Listed companies are concerned that the complexity of the required disclosures under CMR serves to overload the average investor and dilute the effectiveness of the other, more material, information being disclosed about their companies.

Mechanism for Assessing Effectiveness of the CMR

In addition, many of our listed companies fear that, contrary to the objectives of Section 1502, an ultimate outcome of the SEC's final rule is that it is contributing to worsening conditions in

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[4] In April 2014, the D.C. Circuit struck down a portion of the CMR that required that a company describe that its products have "not been found to be 'DRC conflict free'" in the report to be filed with the SEC and to post such statement on its website, finding that this portion of the CMR unconstitutionally compelled speech under the First Amendment.[4] Following the Court's decision, the SEC's Division of Corporate Finance issued an order that stayed the implementation of the struck down provision and other guidance regarding compliance with the CMR. See *National Association of Manufacturers, et al. v. SEC*, et al., No. 13-5252 (D.C. Cir. April 14, 2014).

[5] See, for example, Item 101 of Regulation S-K, which requires disclosure of "any material estimated capital expenditures for environmental control facilities for the remainder of a company's current fiscal year and its succeeding fiscal year and for such further periods as the company may deem material." See also, Item 103 of Regulation S-K, which requires issuers to disclose any material pending legal proceeding.

the DRC. Our listed companies have expressed a similar worry as that noted by Acting Chairman Piwowar in his request for comment on the CMR that the CMR is putting legitimate mining companies out of business in the DRC. The exit of these mining companies is leading to increased joblessness and poverty, which has the opposite of the intended effect of the CMR. In evaluating potential changes to the CMR, our listed companies feel strongly that the SEC should commission an independent study, or coordinate with fellow regulatory agencies that have the required expertise, to assess whether CMR is effective in achieving its stated humanitarian goal of helping to end the brutalities and conflict in the DRC. The results of such study should guide the SEC's decision-making for future changes to the CMR.

Consider Relief for Small Business

Finally, we hear concern from our listed companies regarding the impact of the CMR on small business and the SEC's lack of analysis for impacts on small business in the final rule. The cost of compliance for smaller public companies is enormous. Moreover, many of public companies that are subject to the CMR have relationships, vendor or otherwise, with small to medium sized *non-public* companies from whom they must seek origin information in the course of their conflict minerals investigation process. While these small to medium sized companies are not required to file disclosures under the CMR, they must engage in many of the same tracking and investigative processes for their own supply chain to report information to the public companies with which they do business. The cost of building such mechanisms is outsized for a small private business, many of which are no longer able to compete against larger competitors who have the resources to build sophisticated processes for assessing origin information. In evaluating potential changes to the CMR, our listed companies believe that the Commission should consider additional relief for small businesses, both those who are a "covered company" under the CMR, but also those indirectly subject to the rule through their business relationships with a "covered company."

Sincerely,

Thomas W. Farley
President, NYSE

cc: The Honorable Michael Piwowar, Acting Chairman
The Honorable, Kara Stein, Commissioner
Shelley Parratt, Acting Director of the Division of Corporate Finance