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

By email to: rule-comments@sec.gov

27th January 2011

Dear Chairman Schapiro,

COMMENTS RELATING TO DODD FRANK SECTION 1502 CONFLICT MINERAL LEGISLATION
Proposed Rule Release No. 34-63547; File No. S7-40-10

ITRI is pleased to provide further comments to SEC for the current consultation on the proposed rule for conflict minerals. Please read these additional remarks in conjunction with our previous comment letter of 22 November 2010.

ITRI has more experience than any other body in the implementation of due diligence in DRC countries and we therefore hope that the comments contained in both letters are given full weight and consideration by SEC during further development of the rules.

Matters of key importance are;

- Literal interpretation of Congress's provisions will shortly lead to an embargo on DRC country minerals causing significant harm to miners and communities in the region.
- A suitable phase-in period of between 1-3 years is essential in order to allow due diligence systems to be implemented within the DRC countries and reduce the effect of the embargo.
- A clear proposal to account for existing concentrate and metal stocks is absolutely essential to prevent chaos in the commodity market and severe business disruption and financial loss.
- The burden on users of recycled metal should be reasonable and not excessive in order to promote the continued sustainable use of natural resources.
- The cost and burden of the proposed rules has been seriously underestimated and possible benefits are questionable.

Comments relating to specific questions posed by SEC are provided below.

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

Although the production and supply chain of different minerals and metals vary, they are all complex and all have a role supporting the development of the Great Lakes region. There is no reason not to expect equal standards from each mineral.

The key to success is allowing the correct amount of time for very challenging targets to be achieved. Raising expectations too high too soon has already created a de-facto embargo; only by establishing a reasonable and practical phase-in approach will the legislation benefit the DRC countries. Current proposals from SEC, and a literal interpretation of the legislation, will cause considerable harm to the region.

It would be appropriate to allow metals with a clear plan for due diligence systems, and implementation already underway, to be allowed the required time to make progress before severe disclosure rules are applied. Conversely metals with no apparent plan for due diligence implementation should be required to immediately start disclosure.

This would reward the industries attempting to make progress and incentivise those that are not. There is currently no incentive whatsoever for companies to continue engagement in the DRC.

A similar approach may be applied to countries affected by the legislation such that those already with a plan for due diligence in place should be provided time to allow implementation before disclosure/embargo, while those that do not require more immediate attention.

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?*

Mining and consumer component or product manufacture are two entirely separate and incomparable businesses. If any tin mining companies were to exist in the DRC, as opposed to the current artisanal mining situation, they would be subject to upstream chain of custody and associated requirements. There is no purpose or benefit that would be achieved by their inclusion as a downstream product manufacturer, this would solely result in an increase of burden with no increase of benefit.

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?*

Upstream companies should not be included in the proposed rules. Logically that means that companies should be permitted to perform mining, mineral processing, smelting or refining without being considered as a product manufacturer. A product manufacturer would be any company downstream of, but not including, the smelter/final refiner.

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?*

There is no suggestion in Section 1502 for any such requirement. The legislation clearly only requires disclosure on minerals that do arise in DRC countries. There is no benefit or justification for disclosure on non-DRC country minerals which would be unjustifiably burdensome and have serious anti-competitive implications and must not be included in SEC rules.

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?*

It is unlikely that any material will ever be 100% accurately confirmed to be either from the DRC countries or not from the DRC countries. Such a lack of absolute certainty must in any case be

assumed within the expectations of SEC rules and by anyone relying on any company assurance or disclosure. However, inclusion of multiple labelling options would add to the confusion over, and dilute the effectiveness of the label. As noted by SEC, it is possible to add supplementary information such as 'Not DRC Conflict Free – undetermined origin' in order to more fully describe the disclosure.

Please refer again to point 9 of the previous ITRI letter to SEC of 22 Nov 2010; the definition of cassiterite from any location in the world as a conflict mineral is highly misleading to consumers and acts against, rather than for, achievement of the supposed aims of the legislation. Under the current interpretation the huge majority of metal produced globally, and all products manufactured from it, would qualify for the label 'DRC conflict free' simply by being 'DRC free' i.e. purchased from other regions of the world. Consumers will logically and reasonably expect a 'DRC conflict free' product to contain metal from a non-conflict region of the DRC, and may not expect a 'DRC conflict free' product to be manufactured from minerals produced entirely outside the African region.

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?*

Please refer to comment on Q26 above. Any suggestion to require disclosure of such detailed information on minerals that are not sourced form DRC countries is beyond the scope of the legislation, anti-competitive, unrealistic and hugely burdensome for no additional benefit.

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?*

No, issuers should not be required to disclose the mine of origin of the minerals in their product. Making a direct link between mine and metal produced after smelting and refining of mixed sources is technically impossible. Please refer to points 1, 2 and 3 of the previous ITRI submission of 22 Nov 2010.

Specifically, in order for SEC to elaborate effective and useful rules, it is essential that there is a general understanding and appreciation of the fact that 'trackability' of metal is already lost at the point of the smelter/refiner. There is no additional purpose served by requiring end users to track exact batches of metal through their supply chain to end product, and direct links between a certain mine and a certain end consumer product are impossible to establish.

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?*

Such a requirement is impractical and demonstrates a lack of understating of the mineral exploitation and supply chain in the referenced submission.

Suggesting disclosure on mine of source is already beyond the scope of the legislation and technically impossible (as explained in response to Q40). Even if it was possible to make such a link, the 'capacity' of the artisanal mines found in DRC countries are not known, artisanal miners do not perform planned exploration and do not report available mineral resources in annual reports. A capacity assessment would be possible in general terms but would not be precise enough to be included in any disclosure.

As an example, one shipment container of mineral concentrate, typically 24 tonnes, will usually contain material from hundreds of miners, passing through the hands of many traders. In the iTSCi system of tracking, one such container may have over 5000 associated data records. Any suggestion that an issuer should include all such information in their reports is utterly unreasonable.

Q42: *What liability should our rules assign to the individual who signs the certification?, and*
Q43: *How would the potential liability for a furnished audit report affect the cost and availability of such audit services? and*
Q45: *Are there other ways we should treat the audit report under our rules to balance the interests of receiving a high quality audit and not unnecessarily increasing potential liability and costs?*

Liabilities must be limited in any way possible in the initial years of implementation of the rules. Due diligence processes are not well developed, expertise is limited and concerns over the impact of the conflict mineral on trade, businesses and competitiveness are high. Concerns over liability are one of the primary drivers for company purchasing decisions to exclude all DRC country mineral from supply chains – thus hurting the very people the legislation is supposed to help, the miners and communities in the DRC.

Liability impositions will significantly increase the burden and costs of all due diligence activities in the supply chain and must be restricted. Note also that many large audit companies do not allow staff to operate in eastern DRC.

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?*

Please refer again to the ITRI submission of 22 Nov 2010 – point 1; **All supply chains are highly complex.** There is no reason to suggest that gold should not be considered in the same light, and be subject to the same expectations and requirements, as any other 'conflict mineral'. Indeed, the majority of conflict financing in the DRC is considered to be as a result of unregulated production and trade in gold rather than the other 3 minerals included in the legislation. It would be absurd and irresponsible to allow greater flexibility for gold than for tin, tantalum and tungsten. Please also see comments responding to Q1.

Correction to ***footnote 47:*** *In the industry, tantalite-columbite, cassiterite, and wolframite are "smelted" into their component metals whereas gold is "refined." Even so, both processes are substantially similar. When we refer to "smelting" those references are intended to include the "refining" of gold as well.*

Smelting and refining processes are not 'similar'. Smelting refers to the conversion of the mineral ore, such as an oxide or a sulphide of the metal, into metal form. Output metal from smelting contains many impurities and requires further refining to higher purity before use. Cassiterite requires smelting into tin, and then refining into suitable purity metal. Gold is already found in nature in metallic form, making smelting redundant, purification only is necessary through the refining process. Other processes may be required for coltan and Wolframite.

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?*

In the absence of information from Federal Agencies or the State Department conflict zone maps, any person following the guidance laid out in the OECD document should be considered to be complying with due diligence requirements and minerals produced according to such standards should be considered to be conflict free. This also includes minerals produced under mitigation of an agreed improvement plan. The OECD and UN standards are apparently in agreement, and the OECD document has already been through an extensive multi-stakeholder consultation process.

It is essential that SEC adopt the understanding of armed groups and acceptable reactions to their presence already developed within that OECD framework. If such a step-by step improvement process is not allowed for in the rules the de-facto embargo will indeed by immediate and complete.

General concern over armed group definition

I repeat here again some specific concerns over the practicality of using the proposed definition of armed groups that I described in my letter of 22 Nov 2010. It is unfortunate that SEC did not consider this a matter on which it invited questions in the recent consultation since it is a key matter of importance regarding how SEC rules can be implemented.

According to e)3. an armed group is defined as any such group perpetrating serious human rights abuses in the annual Country Reports on Human Rights Practices. However, there is a serious concern that such a report does not provide sufficient detail, nor is sufficiently frequently updated to properly contribute to such a pivotal part of the US legislation.

For example, it appears that US diplomatic missions in the relevant country are requested to provide submission of draft reports in September and October of each year. The Secretary of State must then submit the Country Reports to Congress by February 25; however the most recent report for the DRC was not available until March 11th 2010. This implies that the Country Report may already be 3-6 months out of date by the time it is made available, and be covering circumstances more than a year old. This is hardly satisfactory for on-going due diligence and mitigation planning purposes. SEC should consider how this issue may be addressed during rulemaking.

In addition, the Country Report does not appear to be sufficiently specific to certain commanders, brigades, regions or mines but is quite generic and does not contribute to full understanding of the security situation in the region. For example, there may be human rights abuses carried out by one or other part of the DRC national army (FARDC) from time to time. That would imply the entire FARDC should be excluded from assisting in providing security around any mine site, not just in eastern DRC but the entire country, not for a short time but for around a year until the next Country Report may be published. Such an interpretation does not match up with international expectations of OECD and UN on mitigation (engagement and improvement) of areas controlled by FARDC.

For example, if a report has been issued in 2012 and another one is due in 2014 but has not yet been issued, the reporting entity will not know whether it should;

(i) still rely on the 2012 report as the most recently issued report,
(ii) seek extension because it cannot comply with this regulation, or
(iii) consider the definition to be flawed and therefore determine that no report is necessary.

Any issuers should also be able to rely on its own risk assessment of such issues if they can be shown to be more recent and appropriate than the information found in the referred Country reports.

It is noted that the State Dept map of conflict zones has not yet become available,

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?*

It is essential that sufficient time is allowed for due diligence processes to be put in place and tested before disclosures are required. Any disclosure at this early point in time, before such processes have been validated would result in all minerals, metals and product manufactured from them being classified as DRC conflict – contrary to the actual situation where a small percentage of the DRC country minerals are conflicted, and production from those DRC countries is in itself already only a small percentage of global production.

Too early an implementation of disclosure would be meaningless and result in confusion and loss of confidence in the legislation and the SEC rules among consumers and businesses alike

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)?*

Yes. It is absolutely essential to allow a transition and phase-in period for the rules for all issuers, not only smaller reporting companies.

Please refer to the second part of comments to **Q61 below 'phase-in time'**.

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?*

No. The date at which a mineral product comes in to the possession of a component or end product manufacturer is not a suitable method of determining time of disclosure. As explained in response to Q40 "There is no additional purpose served by requiring end users to track exact batches of metal through their supply chain to end product, and direct links between a certain mine and a certain end consumer product are impossible to establish."

Imagining an end product manufacturer takes possession of a component containing a derivative of a conflict mineral, the only way that end product manufacturer would then be able to make a disclosure would be by exact tracking of every stage of that component manufacture, back through various other companies and metal traders, and further back to the original smelter. Such tracking would be hugely burdensome and impractical.

Even if such tracking was carried out, and the production date of the metal is known, it is not technically feasible to track an exact production batch through a metal smelter/refinery and it would remain impossible to link the metal in the end product to ore arising from a specific mine. Every disclosure would be 'unable to determine the source of the mineral' – and therefore conflict mineral.

A practical solution would be for an end product manufacturer to specify to its supply chain that metal from approved smelters only must be used from a certain date. The specified date will need to be at a point in the future in order to allow for changes in supply contracts and sourcing to be put in place if necessary.

Please see response to Q61 below.

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 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?*

SEC should remember that the issue of stocks is not a local US question only impacting on US companies but is a matter of significant global concern. Cassiterite and tin is traded internationally as a commodity. Restrictions on trade introduced through implementation of the SEC rules would have huge global price and supply implications to that international market. The US conflict legislation itself has already caused significant uncertainty and disruption in the tin market with associated financial and trade implications. It is *absolutely essential* that SEC introduces rules that fully take into consideration the trade impacts of labelling material conflict of non-conflict.

Indeed, as noted in point 9 of my previous letter of 22 Nov 2010, labelling of all cassiterite from all areas of the world, presents severe business and reputational issues for all tin producers who are not connected in any way with the conflict region.

There is a great deal of material already in existence which cannot retrospectively be traced back to any particular source and may or may not have arisen from the DRC or adjoining countries. This

includes but may not be limited to ore and concentrate, smelting slags or other by-products, as well as smelted and refined metal above ground stocks held by smelters, traders, metal markets, financial institutions, metal users, in downstream components and indeed in government stockpiles.

In the last 10 year period between 2000 and 2009 the level of tin metal stocks held annually by producers, consumers, metal markets or governments has ranged from between 59,332 and 119,276 tonnes. The average annual stock level in that period was 81,903 tonnes.

At the current tin price of US$29,000 this represents a value of US$2,375 million.

In addition there will exist a significant tonnage of ore, concentrate, other materials as well as metal in transit through the supply chain en route to the final product. There are no exact figures for these type of transit stocks but might be estimated to represent an additional 50% on the level of annual production, perhaps 160,000 tonnes of tin. This additional material would therefore hold a current value of US$4,640 million.

This indicates an annual stock value (for tin only) totalling ***US$7,015 million.***

SEC must ensure that appropriate waiver and transition periods are provided for all metals. The total value of existing stocks incorporating tungsten, tantalum, and in particular gold, is incalculable.

These materials may be held for a short time, or for many years depending on prevailing prices, demand, technology or various other factors. It is impossible to provide an average time that stocks may be held. Please also refer to comments provided by the London Metal Exchange '*The rules of the LME provide that metal stored by LME listed warehouse companies in approved warehouses must be capable of being stored indefinitely..*' and the Kuala Lumpur Tin Market.

It is impossible to retrospectively trace or verify the mine source of this already existing metal which would by default become 'conflict' and potentially unsalable in key markets. As already noted in point 2 and point 13 of my previous letter of 22 Nov 2010, the current climate of uncertainty has already caused a trade embargo on DRC and other African minerals as well as price rises in the commodity markets.

Categorising existing stock as 'conflict' simply because the mineral was mined before SEC rules have been agreed and published serves no purpose in furthering the aims of the legislation and would cause serious financial loss to the holders of that stock who may be forced to seek compensation.

Tin is an elemental metal impossible to destroy. Above ground stocks must therefore be considered in a similar manner to recycled metal i.e. if it is believed that metal was mined and produced before the date of enactment of the SEC rules then it should not be subject to those new requirements but exempt.

Refer to remarks made by SEC in the current consultation document;

- …purchasing from recycled sources would not implicate the concerns of the provision (pg 63)
- …such (recycled) conflict minerals would not be implicating the concerns that prompted the enactment of this statutory provision (pg 82)
- …it is impossible to track the source of these minerals due to the various forms of recycling and thousands of consolidators (etc) and because exempting recycled minerals does not contradict the congressional intent (pg 64).

These exact remarks equally apply to existing stocks of material the use of which has no impact whatsoever on possible future funding of armed groups in the DRC countries.

There is no practical difference between a) metal produced in 2009, used in 2010 and recycled in 2015, and b) metal produced in 2009, held in stock and used in 2013, and recycled in 2015. It is the date of mining that is key in terms of the concerns of the provision, and it is that date that should be considered under SEC disclosure rules. Both example a) and b) should be considered pre-existing stock exempt from disclosure.

All issuers are likely to be using older stock material to one extent or another for several years to come, and in every disclosure will be forced to conclude that the source of mineral is unknown and

conflicted. As noted in response to Q56; too early an implementation of disclosure would be meaningless and result in confusion and loss of confidence in the legislation and the SEC rules among consumers and businesses alike.

SEC ask "*Should our rules permit a transition period so that issuers would not have to provide any conflict minerals disclosure or report regarding any conflict mineral extracted before the date on which our rules are adopted?"*

While it would be correct in principle to set the date of extraction as the date relevant for SEC disclosure, this is in fact not possible to implement and a more practical solution is required.

As noted above, significant amounts of mineral concentrate will exist and be in transit through the supply chain at any point in time. However, the date of extraction is not generally recorded or known for mineral purchased from artisanal miners or other external suppliers. The date of production is irrelevant for general business purposes, the only important data for mineral suppliers being price, weight and metal content.

While at some point in the future due diligence systems in the DRC countries should be able to record dates of the first point of trade (miner to first buyer) this is not necessarily the date of extraction. In addition, significant amounts of mineral from non-conflict areas, especially produced by artisanal miners, will never have a known date of extraction. Note in addition, that various types of traders can hold on to mineral for several days or weeks, for reasons relating to pricing or grading/mixing of different sources to account for impurities .

Therefore *it is proposed that the normal period of time taken for mineral to transit from the mine to the smelter, and to be processed by that smelter is assumed to be 1 year*, and the date of metal production at that smelter is then used for matters relating to SEC disclosures i.e. mineral mined in April 2011 is allowed a 1 year time period to transit through the upstream supply chain, arrive at the smelter, pass through further analysis procedures, await processing with other materials to ensure efficient smelting, and be released as a specific metal batch.

Each metal batch produced by a smelter will possess a dated certificate of analysis which may be considered as the production date. In the example used here, *metal with a certificate of analysis dated April 2012 or after, 1 year after SEC rule adoption, would be considered 'new' material subject to SEC disclosure, but that any material with a date of production at the smelter before April 2012 would be provided with a waiver* based on the assumption that it is existing stock predating release of the SEC rules.

SEC also ask ".. 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?

No, there is no purpose for such a requirement. Nothing can be achieved to alter the conditions under which minerals have already been produced, and such a requirement from SEC would represent a significant and additional burden which will only result in totally meaningless declaration of all minerals as unknown source and therefore conflicted.

Failure to take the stock issue fully and correctly into account would cause severe and widespread business disruption, financial losses, and chaos in the tin commodity market. That would severely and negatively affect all businesses connected in any way to the tin sector on a global basis.

Phase-in time

In addition to the time required for allowance of in transit material, further transition periods are required in order to prevent the catastrophic embargo effect of too early and strict introduction of SEC rules at a point when the due diligence systems in the DRC countries have not yet been fully introduced.

1. An allowance of *at least 1 year as a very minimum* should be introduced in order to provide time for the due diligence systems to be set-up on the ground. Even this would be a significantly challenging target.

This would result in a 1 year transition period from April 2011 to April 2012, plus a 1 year stock clearance allowance (to production at the smelter as above) running from April 2012 to April 2013. Another 9 months may be required to clear stock metal through the supply chain and the *first disclosure year would then be January-December 2014* – reporting in January 2015.

2. Even so, experience has already demonstrated the difficulties of working in under resourced and remote environments. Current precise plans for implementation of the iTSCi system in some of those DRC countries show that full coverage of major mine production areas can only gradually be introduced over a period of time that is *approximately 3 years*.

   This would result in a 3 year transition period from April 2011 to April 2014, plus a 1 year stock clearance allowance (to production at the smelter) running from April 2014 to April 2015. Another 9 months may be required to clear stock metal through the supply chain and the *first disclosure year would then be January-December 2016* – reporting in January 2017.

It is logical to delay the first disclosure period by at least 1 year as suggested in 1), ensuring penalties are waived during that period to allow the development of the required systems. It may then be appropriate to introduce only limited penalties for the next 2 years period 2014-6 covered by point 2) in order to allow for finalisation of the systems that can ensure a more accurate disclosure can be made.

Only these 2 phase-in periods will prevent the looming embargo of DRC countries unwanted by all stakeholders.

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?*

As noted in my letter of 22 Nov 2010, special consideration is indeed necessary for recycled metals. For tin the overall recycling rate is around 37% of annual supply.

Many traders and users of recycled metal may be smaller companies for which the additional burden of financing independent audits could be significant. If audit requirements are too strict they may prefer to sell the collected scrap metal to overseas markets rather than to companies within the US. This is no concern to the global tin business since there will always be markets elsewhere for secondary tin, however, SEC may wish to consider the impacts on the US based companies who would have reduced access to secondary metal.

SEC may also wish to take into account the fact that tin is not mined in the US or North America.

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?*

Taking into account comments replying to Q63 above, it may be more practical to allow reporting of reasonable enquiry rather than requiring independent audit reporting for this material.

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?*

It would be necessary to define what constitutes recycled material in order to allow reporting of reasonable enquiry or to allow independent audit.

Please refer to my letter of 22 Nov 2010 for a suitable definition;

> *"Recycled tin, tantalum, tungsten and/or gold is that which can reasonably be considered to have been reclaimed from material arising from:*
> - *the manufacture of downstream products which incorporate those metals or their compounds, or*
> - *processes utilising those metals or their compounds, or*
> - *end-user or post-consumer products.*
>
> *Minerals partially processed, material arising therefrom, and materials from intermediate stages of the smelting and refining process are not considered recycled."*

Definitions in other submissions do not adequately describe all possible sources.

Q66: *Should this treatment be limited to gold, or should it apply to all conflict minerals, as proposed?*

All metals are reclaimed and recycled, it would be illogical to differentiate between gold and other 'conflict minerals'.

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?*

Reporting of reasonable enquiry would be the correct approach that balances burden versus risk.

Q68: *Should we allow exemptions to the information required by smaller reporting companies regarding their use of recycled or scrap minerals? For example, should we not require smaller reporting to furnish a Conflict Minerals Report regarding their recycled or scrap minerals? As another example, if we require smaller reporting companies to furnish a Conflict Minerals Report with respect to recycled or scrap minerals, should we not require those issuers to have such Conflict Minerals Reports audited?*

No, most smaller companies supply to larger companies and will face supply chain demands for information in any case.

SEC must bear in mind that the supply of tin from DRC countries is a low percentage of global production, varying between 1-6% in the last few years depending on circumstance. In addition, the percentage of that small production tonnage influenced by illegal armed groups is also low. SEC is attempting to address concerns over a fraction of a percentage of global tin production and use. Exemptions, even for small quantities will make the legislation completely ineffective and meaningless; it may be useful for SEC to analyse the conflict mineral use of reporting companies to establish effectiveness and justify the burdens introduced.

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

The terms of the legislation require urgent revision to ensure a suitable transition period is introduced. This may not be directly in the interests of the United States as noted in the relevant provision, but it is certainly in the interests of the people of the DRC countries, and especially the people of the eastern DRC who will otherwise face an almost immediate trading embargo and loss of their majority source of income, in some areas a loss of more than 80% of local economic activity.

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.*

As noted in reply to Q68, the effectiveness of the legislation to entirely prevent the use of conflict minerals by US companies is doubtful, while conversely the burden on reporting companies and specifically on their suppliers in less developed countries is huge.

SEC remarks (page 84) that "*Overall, we expect that our proposed rules will have the benefit of furthering Congress's goal of deterring the financing of armed groups in the DRC countries through commercial activity in conflict minerals*."

Unfortunately this is not the case. **Congress's legislation has already had a detrimental effect on legitimate trade, and a complete embargo will shortly result.** Such an embargo will have a de-stabilising effect and is in no way in the interests of the people of the DRC. While SEC are of course following the provisions of Congress's legislation, provision of the suggested transition period is the only way to mitigate the serious negative effects that will otherwise result.

The embargo is a result of the lack of systems that can differentiate 'conflict' from 'non-conflict' sources within the DRC countries. As a result, all DRC country minerals will be assumed to be 'conflicted' and will be unsalable in official mineral trade circuits, and the mineral will be driven into the black markets where it will become untraceable and will be reported without any tax or other financial benefit to the local authorities. Congress has written to SEC of its concerns on 'black market mineral' as a key reason behind introduction of the legislation; ironically, and tragically, the legislation is driving all trade back into that unofficial circuit reversing several years of improvement through formalisation.

Remarks about cost and burden

SEC has seriously underestimated the costs of the application of such detailed due diligence by downstream companies in the US.

SEC also fails to recognise that much of the cost (which has not been properly described or estimated) will fall on the upstream production industry, outside the US, and in some of the least developed and poorest countries of the world. The legislation and Congress has failed to make any allowance for this burden.

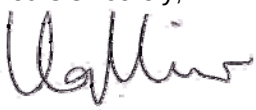
The cost quoted to set up a mineral source validation scheme (page 74) of $8-10 million represents one year of operation in some areas of the DRC, it does not represent a cost to cover mineral production in all DRC countries, nor all of the conflict minerals. It also only represents upstream costs, not downstream company costs.

The cost quoted for an independent audit (page 74) of $25,000 is also not specifically for the type of audits that would be required either on the upstream supply chain, or at the smelters.

Additionally, the calculation shown at the bottom of page 73 does not use realistic assumptions; it is likely that all SEC reporting companies will use at least one of the 'conflict minerals' within their products. The use of tin in particular is extremely widespread since it provides many essential properties in both metallic and chemical form. SEC should not base their calculations on 20% of issuers but on 100% of issuers.

I hope that you find these points useful. Please let me know if you require further details.

Yours sincerely,



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