

Palo Alto, CA 94303

October 29, 2010

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
Attention: Mrs. Elizabeth M. Murphy, Secretary

Re: Press Release No. 2010-135
SEC Initiatives under the Dodd-Frank Act
Comments with Respect to Section 1502 (Conflict Minerals)

Dear Mrs. Murphy:

The Securities and Exchange Commission has requested comments as the Commission sets out to make rules required under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). I am a private U.S. citizen with no current organizational affiliations but I have been employed previously in the semiconductor equipment industry and the mining industry. I respectfully submit the following comments in response to the Commission's request with respect to rulemaking under Section 1502 of the Dodd-Frank Act.

Compliance with Section 13(p) of the Securities Exchange Act of 1934 by U.S. "persons" may result in certain of these persons risking considerable expense for little social benefit in preparing the required disclosures.

As the SEC is sensitive to burdening U.S. public companies with reporting costs, I am recommending that the SEC:

- Take steps to identify the segments of the U.S. manufacturing sector likely to fall into a high cost/benefit category; and
- Write the rules to ensure equitable and reasonable cost/benefit outcomes for all manufacturing industries.

Identify Manufacturing Segments Subject to High Cost/Benefit Ratios

The reporting cost per unit of manufactured product for those items for which one or more conflict minerals are necessary may vary widely from pennies a part (as an Intel spokesperson is reported in the Columbus Dispatch of 25 July 2010 to have estimated) to possibly many thousands of dollars per finished manufactured product. The variation in unit reporting cost will depend upon such factors as:

- Number of units sold in each product line per year. This may vary from tens of units (e.g., tools used in semiconductor manufacturing plants, aircraft) to millions of units (e.g., Apple iPads, incandescent light bulbs)

- Number of components in each product. This may vary from millions (e.g., a Boeing 747) to many tens of thousands (e.g., semiconductor tools) to hundreds or less (e.g., cell phones, incandescent light bulbs)
- Number of these components that contain conflict minerals. This is currently unreported in the public literature to my knowledge; and, for example, could be high for a product with a lot of electronic components.
- Weight of conflict metals used per finished product. In some applications, specific conflict minerals may be used in very small quantities but be necessary for the functionality of the finished product because of their special properties.
- Depth of supply chain. In the semiconductor tool product area, a supply chain may easily have five to seven layers of manufacturers counting from the metal producer, plus multiple layers of independent distribution companies, sometimes with some of these suppliers outside the U.S.
- Number of qualified suppliers at each level. No company would wish to limit its options to purchase from different suppliers simply because they have not previously confirmed any supplier's source of conflict minerals. Therefore, any manufacturing company would be prudent to check the sources of all their potential suppliers.
- U.S./international split of suppliers. Obtaining information from foreign suppliers and auditing this information is likely to be a more expensive activity.

I encourage the SEC to work with industry to spot check the likely impact of these factors on the range of reporting costs under different sets of proposed rules.

Specifically, estimates should be made for **two key cost/benefit metrics** for manufacturers in different industries under different proposed set of rules. These are (1) reporting cost per dollar of sales; and (2) reporting cost per dollar denied to armed groups in the Democratic Republic of the Congo (DR Congo). For simple products with a large proportion of conflict minerals in them such as incandescent light bulbs which are sold in their millions, both these ratios are likely to be low and reasonable. For complex products sold in tens or hundreds, such as semiconductor tools, these ratios could be orders of magnitude higher and quite onerous.

As a refinement, these ratios should be calculated separately for gold from the other conflict minerals. These ratios may be substantially different for gold because of its greater value (over \$14,000 per avoirdupois pound versus around \$10 per pound for the other minerals); the greater difficulty in detecting and controlling the flow of gold from eastern DR Congo; and the incentive for most manufacturing industries to use gold sparingly because of its very high price. Also, as Resource Consulting Services has pointed out, the trade in gold is the principal earner of the Forces démocratiques de libération du Rwanda (FDLR), one of the armed groups of concern.

The impacts of high ratios could be most disadvantageous to the competitiveness of many small and medium businesses, and of start-up companies. Moreover, applying rules that cause high cost/benefit ratios to these

companies is likely to cause little disadvantage to armed forces savaging civilians in the DR Congo, and possibly some disadvantage to many civilian artisanal miners and their families who depend on mining for their living.

Write the Rules to Ensure Equitable and Reasonable Cost/Benefit Outcomes

I suggest that the SEC avoid, as far as possible, duplication of effort by companies to obtain and audit data.

The potential paths of minerals and derivatives from mines anywhere in the world including those in African countries to the processors of the respective metals are common to **all** reporting companies. These are likely to be the most difficult parts of the overall paths from mines to manufacturers from which to collect reliable data.

Therefore, data from this part of the overall path from mine to manufacturer should therefore be produced once only by a reputable and competent source, who would also take responsibility for arranging third-party auditing. Such data would then be made available to all reporting entities as well as to the public in a standardized electronic format. Using this data should be acceptable to the SEC as showing appropriate due diligence and requiring no further auditing, except to ensure the absence of transcription errors or intentional misuse.

Given that the paths from many mines through to processors will be frequently outside the U.S., a possible agent to lead the project may be the Department of State. I have suggested the Department of State because:

- It has the existing relationships with other entities such as the government of the Democratic Republic of the Congo, the governments of adjoining countries, the International Conference of the Great Lakes Region (ICGLR), the OECD, and the United Nations. All these entities, and others, may have key roles to play in the due diligence program within Africa.
- The SEC's rules to implement Section 13(p) ought to be integral with the "holistic strategy" that Secretary of State Clinton in July 2010 directed the Department of State to develop on the issue of conflict minerals as part of their broader effort to engage effectively with the DR Congo.
- The Department of State is charged in Section 1502 of the Dodd-Frank Act with submitting a plan "to monitor and stop commercial activities involving the natural resources of the Democratic Republic of the Congo that contribute to the activities of armed groups and human rights violations in the Democratic Republic of the Congo..." Inferentially, such a plan would need to include a sub-plan to identify the specific actors involved in such activities.
- Furthermore, the Department of State is charged with submitting a plan "to provide guidance to commercial entities seeking to exercise due diligence on and formalize the origin and chain of custody of conflict minerals..."
- Leadership by the Department of State would also reduce the temptation for individual companies to cease sourcing conflict minerals at all from the DR Congo and adjoining states, and so enable residents of those countries to continue earning export income from conflict minerals.

- The Department of State produces the annual Country Reports on Human Rights Practices from which armed groups are to be identified. Their lead in tracking conflict minerals back to their sources would enable them to remove any ambiguity as to who the armed groups are, and the mines with which they are associated, on a year-by-year basis. The Department of State, and not private companies, is clearly the right organization to make the necessary judgments behind these sorts of determinations.
- It would facilitate the Department of State in adding additional minerals or their derivatives determined to be financing conflict in the DR Congo or an adjoining country to the list of conflict minerals, if that option were to be exercised by the Department of State.

To reduce duplication of effort for supply chains from metal producers to final manufacturers, the SEC may find it more efficient to partner with reputable industry associations and their members who are willing to recommend processes that meet the SEC's due diligence and auditing requirements. These associations and their members would be best placed to decide on a data collection and auditing process that reduces duplication of effort by individual companies.

Whatever set of rules are drafted by the SEC should be piloted with several of the manufacturing industries for which the cost/benefit ratios are highest. Perhaps the pilot projects should focus on gold first for the reasons suggested above. New companies should be included in the pilot project with their expenses paid by the U.S. government. This pilot project would provide estimates of the cost/benefit ratios.

Based on the outcome of the pilot project, the SEC could then decide on ways to write the rules to ensure that the cost/benefit ratios for all industries and companies are equitable and reasonable. These may involve setting threshold ratios for compliance and so excusing manufacturers of certain classes of products; setting the effort of due diligence and auditing at different levels for different industries and for different conflict minerals particularly gold; or using other mechanisms to ensure equitable and desired cost/benefit outcomes.

Sincerely,

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