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U.S. Securities and Exchange Commission
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Re: File No. S7-40-10, Conflict Minerals

Dear Commissioners and Staff:

We appreciate the opportunity to provide our views on the U.S. Securities and Exchange Commission's ("SEC" or "Commission") request for comments related to the implementation of Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") requiring regulations related to the disclosure and reporting obligations concerning the use of conflict minerals from the Democratic Republic of the Congo ("DRC") and adjoining countries ("DRC countries") of issuers that file reports pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934. Our comments primarily speak to the independent private sector audit requirement of the Conflict Minerals Report and include certain other matters for your consideration.

It is our understanding that a Conflict Minerals Report is to be furnished to the SEC when the issuer determines that conflict minerals originated in DRC countries, or is unable to conclude, affirmatively, that conflict minerals did not originate in DRC countries. The Conflict Minerals Report is to include, among other information, a description of any of the issuer's products that contain conflict minerals that are not DRC conflict free, along with a description of the due diligence measures taken by the issuer to identify the source and chain of custody of its conflict minerals. As part of this due diligence, a certified independent private sector audit conducted in accordance with the standards established by the Comptroller General of the United States ("Comptroller General"), commonly known as *Government Auditing Standards* (GAGAS), is also required.

We have significant reservations as to several aspects of the proposed audit requirement. In our view, the proposal does not adequately address the form of engagement and the related report and opinion (or conclusion) that will be required of the independent private sector auditor. We have the following specific concerns regarding the proposal:

- It seems to indicate that either an attestation engagement or a performance audit may be acceptable to meet the audit requirement. The two engagements differ in nature, scope, and

reporting requirements (for example, a performance audit report is less standardized). We believe that the form of engagement and the related report should be consistent among issuers. Otherwise, differences in the application of, and the reporting under, the two approaches could be significant, potentially causing confusion and misunderstanding among users of the audit report.

- It is silent as to the subject matter of the engagement; that is, the objective of the audit, including the opinion (or conclusion) to be expressed on the issuer's Conflict Minerals Report, is not described. There are various types of engagements whereby the subject matter could pertain to management's due diligence process or management's assertion(s) that the conflict minerals are not DRC conflict free or that the issuer is unable to make such a conclusion. In determining the form of engagement, consideration should be given to the criteria that will be used to evaluate the subject matter (discussed subsequently) and the availability of audit evidence necessary to form an opinion (or conclusion) about the subject matter. We believe that reporting directly on management's assertion(s) or the completeness and accuracy of the Conflict Minerals Report would be difficult and costly given the subjectivity of the subject matter and the extent of audit procedures necessary to obtain sufficient appropriate evidence.

- It does not address the criteria that will be used to evaluate the subject matter. For instance, criteria for evaluating whether the issuer's assertion that its conflict minerals are DRC conflict free would substantially differ from criteria for evaluating whether the issuer's process for making such an assertion is appropriate and consistent with SEC rules and regulations. Regardless of the subject matter or the form of engagement, suitable criteria must be objective, measurable, complete, and relevant. This is a critical element that should be consistent in each audit and not based on the judgment of each auditor.

We strongly recommend that the Commission establish a working group to support the Comptroller General in the development of the appropriate form of engagement, including the criteria to be used to evaluate the subject matter and the opinion (or conclusion) to be expressed thereon. Although we recognize the time constraints imposed by the effective dates mandated by the Dodd-Frank Act, we believe that the expedited formation of a working group would assist the Commission in making appropriate decisions as it relates to the final rule and, along with the Comptroller General, in developing appropriate criteria and a practicable reporting framework.

Professional standards

As previously indicated, the proposal is unclear as to the form of engagement and the related report and opinion (or conclusion) that will be required of the independent private sector auditor. Although the proposal indicates that GAGAS applies, if an attestation engagement is performed, the standards for such an engagement also incorporate the relevant standards of the American Institute of Certified Public Accountants. Since the Conflict Minerals Report and the related audit report are to be furnished to the SEC as an exhibit to the issuer's annual report that is filed with the SEC, we believe that the Commission should clarify the applicability, if any, of the standards of the Public Company Accounting Oversight Board, in light of the

Sarbanes-Oxley Act of 2002 as it relates to the preparation and issuance of audit reports required by that Act or the rules of the Commission.

In the same manner, the Commission should also clarify the independence standards that apply to engagements to report on the Conflict Minerals Report, particularly when the independent private sector auditor is not the auditor of record of the issuer's financial statements ("auditor of record"). We also note that the proposal, consistent with the Dodd-Frank Act, indicates that the independent audit is a "critical component of due diligence." This statement, in and of itself, is contradictory to the concept of an independent opinion, conclusion, or any other form of assurance on the subject matter of the engagement. Accordingly, we believe that the Commission should clarify the intent of this statement, including the effect, if any, on the independence of the auditor of record.

Certification

The Dodd-Frank Act requires the person submitting the Conflict Minerals Report to certify the audit, although the purpose of the certification is not clear. Consequently, the Commission's proposal will require the issuer to certify that it obtained an independent private sector audit. However, because the audit report is also required to be furnished to the SEC within the same filing, we believe that the intent and purpose of the certification needs to be clarified or the form of submission of the audit report reconsidered.

The Conflict Minerals Report, along with the audit report, will be made available to the public on the entity's Internet website and will also be referenced in the issuer's annual report on Form 10-K, or comparable filing. Thus, we support consideration of a requirement for senior management of the issuer to certify, within the annual report, that they have obtained an independent private sector audit, without specifically naming the auditor, and a separate submission of the audit report to the SEC.

Consents

We concur with the Commission that, if the audit report were to be furnished to the SEC, it would not be deemed to be incorporated by reference into any filing under the Securities Act of 1933 ("Securities Act") or the Securities Exchange Act of 1934. To do so would significantly expand the auditor's responsibilities, also causing issuers to incur unnecessary costs.

If the issuer will be permitted to specifically incorporate the audit report by reference, we believe that the SEC's rules and regulations should clearly stipulate that the auditor is not required to provide a consent to the use of the auditor's report or other references to the auditor in connection with the issuer's Conflict Minerals Report. In this regard, the auditor's report should not be considered a report on, or a part of, the registration statement prepared or certified by the auditor, within the meaning of Sections 7 and 11 of the Securities Act, and the auditor's liability under Section 11 should not extend to such report. Accordingly, the auditor should not be considered an "expert."

Other information

Under the proposal, if the issuer concludes that any of its conflict minerals did not originate in DRC countries, the issuer would be required to disclose this fact in the body of its annual report, along with the reasonable country of origin inquiry it undertook, without providing a Conflict Minerals Report. We believe that such disclosures constitute other information with respect to the responsibilities of the auditor of record, in which case the auditor of record should not be required to corroborate the disclosures made or perform any procedures to determine whether disclosures are necessary. The auditor's procedures should be limited to reading the disclosures and considering whether they, or the manner of their presentation, are materially inconsistent with the financial statements, including addressing any identified material inconsistencies or misstatements of fact that come to the auditor's attention. We believe that the final rule should be clear in this regard.

Terminology

The proposal uses several terms and phrases found in the Dodd-Frank Act that could be interpreted broadly; for example, necessary to the functionality or production, manufactured, due diligence, and directly or indirectly finance or benefit armed groups, to name a few. Although we understand, to some extent, the difficulty in defining such terms and phrases beyond the Dodd-Frank Act, we recommend that the Commission provide additional guidance that provides some form of boundaries as to their interpretation. Otherwise, we fear differences of opinion and inconsistencies in practice may result between issuers and their auditors.

We would be pleased to discuss our letter with you. If you have any questions, please contact Karin A. French, National Managing Partner of Professional Standards, at (312) 602-9160.

Sincerely,