SOCIETY OF CORPORATE SECRETARIES
& GOVERNANCE PROFESSIONALS

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June 21, 2011

Ms. Elizabeth M. Murphy
Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

Re: Conflict Minerals Section 1502 of the Dodd-Frank Wall Street Reform Act, File No. S7-40-10

Dear Ms. Murphy:

The Society of Corporate Secretaries & Governance Professionals (the "Society") appreciates the opportunity to provide additional comments to the Proposed Rules for Implementing Section 1502 of the Dodd-Frank Act, SEC Rel. No. 34-63547 issued on December 15, 2010 (the "Proposed Rules") by the Securities and Exchange Commission (the "SEC" or the "Commission").

Founded in 1946, the Society is a professional membership association of more than 3,100 attorneys, accountants, and other governance professionals who serve approximately 2,000 companies of most every size and industry. Society members are responsible for supporting the work of corporate boards of directors and their committees and the executive management of their companies regarding corporate governance and disclosure. Our members generally are responsible for their companies' compliance with the securities laws and regulations, corporate law, and stock exchange listing requirements.

The Society previously submitted a comment letter to the Proposed Rules on March 3, 2011. In light of further industry research and development concerning the context in which the conflict minerals disclosure scheme will operate, the Society offers the following additional recommendations for implementation of Section 1502 of the Dodd-Frank Act.

The Terms "Manufacture" and "Contract to Manufacture" Should be Narrowly Defined.

We believe the term "manufacture" should be defined by reference to the U.S. Census Bureau and North American Industry Classification System (NAICS). Further, the phrase "contract to manufacture" should be limited to manufacturers that both: (1) directly or indirectly contract or subcontract with other manufacturers; and (2) have direct and substantial control over the manufacturing process of such other manufacturers. Otherwise, the obligation to conduct inquiries and due diligence and prepare disclosures and reports would apply to a significant number of companies that have little contact with or control over the manufacturing process, including companies that do little more than specify product features or arrange to have their name or service mark included on a product. Because those companies lack influence or information regarding the sourcing of raw materials, the Proposed Rules would impose a significant burden on such companies and would likely have very little impact on the fundamental goal of Section 1502 of the Dodd-Frank Act.

In addition, unless the terms "manufacture" and "contract to manufacture" are defined as we have proposed, significantly more companies could be affected by the Proposed Rules than the 5,994 companies that the SEC estimated. The SEC's estimate, prepared for purposes of the Paperwork Reduction Act, was based on the number of companies that fell only under the Standard Industrial Classification codes that the SEC believed were most likely to manufacture or contract to manufacture products with conflict minerals necessary to the functionality or production of such products. As noted above, requiring companies that do not have direct and substantial control over the manufacturing process to comply with the Proposed Rules would impose significant burdens on those companies without furthering the goals of Section 1502 of the Dodd-Frank Act.

Companies Should Be Permitted to Rely on the Reasonable Representations of Processing Facilities and Other Parties in the Supply Chain.

It is neither practical nor cost-effective for each downstream company subject to Section 1502 to conduct its own investigation of all suppliers in its supply chain (a "downstream" company is a company that, as the customer, is downstream from its suppliers). Manufacturing companies typically have a significant number of direct suppliers; indeed, industry data indicates that the number of direct suppliers for a single manufacturing company ranges from one to several hundred. In addition, often there are multiple layers of intermediaries between the direct suppliers and the initial processing facilities, which are generally the best source of information concerning the source of conflict minerals. Given this reality, the only practicable method for downstream companies to obtain the necessary information is to rely on representations made by their direct suppliers, who in turn will rely on representations made from their suppliers, with the information ultimately coming from the parties with the requisite knowledge (which are generally the processing facilities that initially process the ore). If companies are not permitted to rely on the reasonable representations of their direct suppliers, there would be duplicative inquiries, tracing efforts, diligence, auditing, and reporting, which would be inefficient, burdensome and costly, and would not enhance the disclosures made available to the public beyond what would be accomplished through a representation and certification process.

In addition to allowing downstream companies to rely on the representations of their upstream suppliers, we suggest that the final rules be flexible so that companies and their upstream suppliers can develop appropriate standards for the necessary representations, which may evolve over time as mechanisms are developed to trace minerals from the mines to the initial processing facilities. If a company in the supply chain is not subject to the SEC's reporting requirements (e.g., a privately held company), we believe that downstream companies subject to the SEC's reporting requirements would be able to exert sufficient business pressure on those suppliers to conduct reasonable inquiries and due diligence and establish and maintain appropriate policies and procedures so that the suppliers could provide reasonable representations.

Therefore, permitting companies to rely on reasonable representations from their upstream suppliers is the most realistic and cost-effective manner of implementing Section 1502 consistent with Congress's goal of addressing human rights violations in the Democratic Republic of the Congo and adjoining countries ("DRC countries").

The Disclosure Regime Should Be Phased In to Accommodate Development of the Necessary Infrastructure.

We suggest that the due diligence, disclosures and reporting required under Section 1502 be phased in (as discussed below), similar to the approach taken by the SEC with respect to the introduction of required reporting on internal controls over financial reporting. By recognizing the fact that the infrastructure necessary to comply with the Proposed Rules does not currently exist, a phase-in would minimize the undue burden and cost imposed on companies in the near future. At the same time, it would promote Section 1502's underlying purpose. In this regard, a phase-in would allow companies to formulate and begin to implement the policies and processes necessary to exert pressure on upstream suppliers to source conflict minerals responsibly.

In order to comply with the Proposed Rules, issuers must have a reliable basis for determining the origin of conflict minerals used at the processing facilities in its supply chain. A phase-in period provides the necessary time for issuers and industry groups to develop mechanisms to trace conflict minerals from the mine of origin to the processing facility. We understand these efforts are currently underway. For example, the Electronics Industry and Citizenship Coalition and the Global eSustainability Initiative are collaborating to launch a conflict-free smelter program to identify smelters that can demonstrate that the conflict minerals they procured did not originate from sources contributing to conflict in the DRC countries. In addition, the International Tin Research Institute is developing a mechanism to trace cassiterite from the mine of origin to the processing facility. Genuine progress is being made in this regard, but issuers cannot harness the value of such supply chain tracing mechanisms until they are fully implemented.

Accordingly, we urge the SEC to adopt a transition rule that requires reporting only with respect to conflict minerals that are derived from metal smelted on or after January 1, 2012. This would relieve companies of the undue burden of tracing minerals potentially sourced many years prior to the effective date of the Dodd-Frank Act.

Furthermore, we suggest that for the period from January 2012 through January 2014, the SEC should require only disclosure of the following information for companies unable to determine the country of origin after a reasonable inquiry: (1) the conflict minerals that are necessary to the functionality or production of a product manufactured or contracted to be manufactured by that company and (2) the fact that the company is unable to determine the country of origin after due inquiry. During this period, such companies should not be required to submit a Conflict Minerals Report. After January 2014, company obligations would be phased in by conflict mineral type based on when industry verification programs are put in place, as described above.

By recognizing the reality that it will take time for conflict mineral tracing mechanisms to develop and for downstream companies to implement practices affecting supplier sourcing behavior, a phase-in period, as proposed above, would advance the goals of Section 1502 in the most efficient and effective manner and result in more meaningful disclosure. A phase-in process is even more important if the terms “manufacture” and “contract to manufacture” are not appropriately defined as we propose above.

The Cost to Companies to Comply with the Proposed Rules Will be Significantly Greater than the SEC’s Estimate.

The SEC has estimated the total annual increase in the paperwork burden for all affected companies to comply with the proposed collection of information requirements to be approximately 153,864 hours of company personnel time, as well as approximately $71 million for the services of outside professionals (including the time and cost of collecting the information, preparing and reviewing disclosure, filing documents, and retaining records). We conducted a targeted survey of approximately 20 of our members, and at this time most of the respondents have not yet been able to precisely quantify the costs to comply with the Proposed Rules, as they cannot yet determine the extent of the due diligence or other efforts that will be required in order to make the required disclosures, which in some instances will include an audited Conflict Minerals Report. However, initial compliance obligations will require significant internal resources, and those companies that determine they are covered by the provisions requiring due diligence, independent private sector audits and the Conflict Minerals Report are expected to incur much more substantial costs, especially if they are not able to rely on representations from their direct upstream suppliers, as we propose. One large cap manufacturing company believes it will cost several million dollars in its first year to comply with the rules as proposed. Further, as noted above, if the terms “manufacture” and “contract to manufacture” are not defined as proposed above, the Proposed Rules could affect significantly more than 5,994 companies. As a result, we believe that the cost to companies to comply with the Proposed Rules will likely significantly exceed $71 million.

We respectfully request that the SEC implement Section 1502 of the Dodd-Frank Act in the manner described above. We appreciate the opportunity to provide additional comments on this important rulemaking and would be happy to provide you with further information to the extent you would find it useful.

Respectfully submitted,

/s/ Neila B. Radin

Chair, Securities Law Committee
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Governance Professionals

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