# IPMI

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by e-mail to: rule-comments@sec.gov
re: DF Title XV - Specialized Disclosures

Mary L. Schapiro, Chairman
Securities and Exchange Commission

Re: DF Title XV - Specialized Disclosures
Conflict Minerals Regulation
Dodd-Frank Act, Section 1502

Dear Chairman Shapiro,

The International Precious Metals Institute (IPMI) is an association of producers, refiners, users and other persons with a special interest in precious metals. We appreciate the opportunity to comment in advance of a proposed conflict minerals regulation directed by Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

We start with an assurance that we support international efforts to control and reduce conflict in the Democratic Republic of the Congo (DRC), and the humanitarian goals of the Act. We are nevertheless concerned with some suggestions of extraordinary due diligence requirements for the gold supply chain, requirements that may be beyond the reasonable capacity of U.S. gold dealers, may be unproductive of any benefits to the DRC, and may be counterproductive to broader social, environmental and economic goals. We suggest that the SEC look to a know-your-customer program to which dealers in precious metals are currently subject and compliant – the anti-money laundering requirements of the U.S. Treasury.

We agree with other commenter's upon this issue that the most effective method of control of DRC gold is to police the supply chain from mine to refiner, because that is the source of money to the conflict participants. The DRC itself apparently has no gold refining capacity, and its gold production is exported for that purpose, offering a target for due diligence. In that context, however, we see only a small chance that DRC gold enters the U.S. gold refining supply chain. The U.S. is itself a major mining producer of gold, with production well in excess of national consumption, and the U.S. is a net exporter into world gold markets.

The DRC is one of 98 countries where gold is also mined (U.S. Geological Survey 2008 Minerals Yearbook – Gold), but it does not have a significant role in world supply. The USGS estimated 2008 DRC mine production at 10 tonnes, less than 0.5% of total world mine production of 2280 tonnes. Other estimates are slightly higher, about 1-2% of world mine supply (UN, Final report of the Group of Experts on the Democratic Republic of the Congo, November 23, 2009; CBS, 60 Minutes, November 29, 2009), but still well below a commercially commanding level. Very little DRC gold is officially imported into the United States. According to U.S. Customs data, 2009 imports from the DRC were only 222 ounces, and total imports from the DRC plus its nine adjoining countries were only 845 ounces. While we recognize that unofficial smuggled export of gold from the DRC is large, a very small import of that gold into the U.S. fits with commercial reality. There are major gold refiners in other countries, most notably the United Arab Emirates that are much closer to the DRC, countries with well-established trading routes and commercial networks, to which transportation is more convenient and less expensive. The UN reports that Dubai is in fact the primary destination of DRC gold. The U.S. would not be considered a practical destination for refining of DRC gold under any circumstances.

This is not to say that due diligence by U.S. refiners is unnecessary to watch for DRC gold. It is reasonable to expect that a U.S. refiner know its sources of supply, wherever they are located, and know that those sources are not supporting armed conflict. This is particularly true when there is a direct mine-to-refiner relationship, and a geographical risk that calls for enhanced due diligence. We caution, however, that some gold mining in a number of countries is artisanal and/or small in scale. Such mining provides an economic livelihood to its practitioners, and is not often associated with armed conflict. However individual artisan miners and very small mining companies do not deal directly with gold refiners, for a variety of practical reasons; they deal instead with local traders who purchase their small lots and accumulate them into commercial quantities. There may be a series of such traders in the supply chain to a refiner. This is significant to put into the context of reasonable due diligence requirements - if a final trader is located outside of the DRC and its adjoining countries, and is reasonably known to a refiner, it is not reasonable to require that the refiner track behind the trader through the entire chain, unless there are red flags or other reasons to believe that the transaction is supporting DRC conflict. For example, a trader located in Alaska, or Peru, both of which have artisan gold mining, should not require the degree of due diligence that might be appropriate for a trader in Ghana, or Mali.

We also believe that recycled gold waste and scrap should be deemed to be a conflict-free source, again in the absence of particular geographical risk or other red flags. These secondary sources of gold range from manufacturers that use gold, where virtually every gold process residue, polishing rag, floor sweeping, etc. is reclaimed for its gold content, to hundreds of thousands of individual persons selling individual pieces of gold jewelry to thousands of retail jewelers, pawn shops and specialized gold buyers. It is, of course, true that some small part of this gold may once have been mined in the DRC.

However we do not believe that waste and scrap of gold that was originally mined in the DRC, and that has since been refined in other countries and has become fabricated into jewelry or electronics, is a significant (if any) source of conflict in the DRC. Again, this is not to say that due diligence is not necessary for sources of secondary gold materials. However we believe that the risk of DRC gold being intentionally transformed into waste and scrap for the purpose of evading international notice of its origin is very small. As with other sources of supply, a refiner should not be expected to track all waste and scrap back to its individual sources where it deals with reliable sources and traders. It is also worth noting that production of gold from waste and scrap is far more environmentally sound than production from mining, with orders of magnitude less use of hazardous chemicals and energy, and thus of global warming consequences. Recycling should not be discouraged or unnecessarily burdened when it is not a likely source of conflict.

In summary, we are not opposed to due diligence of our supply chains. Indeed due diligence is part of our present business practice. All U.S. gold dealers are already required to have and implement anti-money laundering programs (USA PATRIOT Act, Section 352; 31 CFR § 103.140) that require a dealer to evaluate risks of money-laundering and terrorist finance associated with customers, jurisdictions and transactions. Under this law, a U.S. dealer must already give attention to jurisdictions and entities of special concern listed by the Secretary of the Treasury pursuant to 31 U.S.C. 5318A, the Department of State under 22 U.S.C. 2371, and the Financial Action Task Force. The addition of the DRC and its adjoining countries to these lists, and specific attention to the conflict in that region, will not be an undue burden, and U.S. dealers in gold do not object.

However our present due diligence requirements dictates few such absolute barriers, or prescribed steps. They are instead risk-based, calling upon the informed judgment of dealers to make inquiries, and to make appropriate decisions. As the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN) has directed, "Dealers must use the expertise that they possess about their industry, their particular business, and their particular customers and suppliers." (70 FR 33709, June 9, 2005) The same standard should apply to a reasonable due diligence and determination of conflict-free gold from sources outside of the DRC and its adjoining countries.

Again, we appreciate the opportunity to make preliminary remarks in advance of a proposed Commission regulation, and we look forward to further participation in the rule-making process. Please let us know if you have questions or would like to have additional information.

Very truly yours,

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