November 19, 2010

The Honorable Mary L. Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: **SEC Regulatory Initiatives under the Dodd-Frank Act: Specialized Disclosures - Section 1502 - Conflict Minerals**

Dear Chairman Schapiro:

We write to submit comments on the Securities and Exchange Commission (SEC) rulemaking under the Dodd-Frank Act Section 1502 - Conflict Minerals.

With C$4.8 billion in assets under management, NEI Investments' approach to investing incorporates the thesis that companies integrating best environmental, social and governance (ESG) practices into their strategy and operations will provide higher risk-adjusted returns over the long term. Through our company evaluations, proxy voting, corporate dialogues and policy work we have extensive experience in encouraging companies to incorporate ESG best practices – including best practices in supply chain management. We invest in many companies listed on US exchanges.

The link between mining, processing and trade in conflict minerals and ongoing conflict and human rights abuses in the Democratic Republic of Congo (DRC) is well-documented[1]. Not only is the situation unacceptable from a humanitarian perspective, it also exposes companies that rely on conflict minerals to significant reputational and supply chain risk, which in turn creates risk and uncertainty for investors. The risks associated with conflict minerals in the supply chain affect a wide range of industries, including electronics, machinery and equipment, automobiles, aerospace and jewelry. Investors need consistent and comparable data to evaluate the supply chain policies and practices and conflict mineral risk exposure of different companies, to inform investment decision-making and allow for targeted corporate engagement.

In this context, we draw your attention to comments posted by Boston Common Asset Management on November 16 regarding the SEC rulemaking on Section 1502, which are supported by investment institutions with assets under management of over US$ 230 billion[2].

The SEC rulemaking under Section 1502 presents an important opportunity to increase transparency regarding the supply chain of companies whose products may potentially contain conflict minerals. The rules could also give companies added arguments and incentive to push their suppliers "upstream" in the supply chain towards greater transparency and improved policy and practice – contributing to the ultimate goal of stimulating sustainable development in the region by redirecting

[1] See, for example, United Nations Security Council (2010) *Interim report of the Group of Experts on the DRC, submitted in accordance with paragraph 6 of Security Council resolution 1896 (2009)* http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/375/91/PDF/N1037591.pdf?OpenElement; Business for Social Responsibility (2010) *Conflict Minerals and the Democratic Republic of Congo* http://www.bsr.org/reports/BSR_Conflict_Minerals_and_the_DRC.pdf.
[2] http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-54.htm

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the profits of minerals activity in the DRC and adjoining countries away from armed groups, and stimulating the production of supplies from conflict-free sources.

We suggest that SEC should take into account the following issues in the rulemaking:

Clarify which companies are required to disclose

The rulemaking should clarify which companies are covered by the requirement to provide disclosure on the conflict minerals issue. In subsection b, within the reference to the new subsection 13.p.2.B, the requirement to disclose is directed at companies for which *"conflict minerals are necessary to the functionality or production of a product manufactured by such a person"*. The rulemaking should clarify the meaning of "necessary" in this context, so that the requirement to disclose covers all companies manufacturing products based on minerals that are potentially associated with the DRC conflict - including companies that choose to use potential conflict minerals rather than other materials for reasons of quality, price or availability, rather than strict necessity.

In subsection e.4.A-B, a set of minerals and derivatives are defined as "conflict minerals", and a mechanism for expanding the list is established. It should be made clear that a company is required to provide certain disclosures if its product supply chain contains any of the conflict minerals referenced, even if the company is able to demonstrate that the supply chain of the actual minerals used in its products is not associated the conflict in the DRC.

Clarify expectations on what should be disclosed

In the context of clarifying expectations on disclosure of due diligence procedure on conflict minerals in the supply chain, we draw attention to the following recommendations from the investor letter highlighted earlier:

"Whether through an independent or industry-wide process, for a due diligence procedure to be reliable, it should contain the following elements and demonstrate a reasonable standard of care when implementing the following elements:

a. *Conflict minerals policy.*
b. *Supply chain risk assessment due diligence, which includes a description of efforts made and result of efforts to obtain information below.*
c. *A description of policies and procedures to remediate instances of non-conformance with the policy, and the subsequent outcomes of the remediation procedures.*
d. *Independent third party audit of the due diligence report, which includes a review of the management systems and business records.*
e. *Smelter auditing mechanism by an independent third party.*
f. *When it is determined that incoming minerals originate from DRC or neighboring countries, the third party audit, made available via a publicly available website, should additionally include:*
    i. *On the ground assessment (including site visits);*
    ii. *all taxes, fees or royalties paid to government for the purposes of extraction, trade, transport and export of minerals;*
    iii. *any other payments made to governmental officials for the purposes of extraction, trade, transport and export of minerals;*
    iv. *all taxes and other payments made to military or other armed groups;*
    v. *the ownership (including beneficial ownership) and corporate structure of the exporter, including the names of corporate officers and directors; the business, government, political or military affiliations of the company and officers;*

vi. *the mine of mineral origin;*
vii. *quantity, dates and method of extraction (artisanal and small-scale or large-scale mining);*
viii. *locations where minerals are consolidated, traded, processed or upgraded;*
ix. *the identification of all upstream intermediaries, consolidators or other actors in the upstream supply chain, including; and*
x. *transportation routes.*

g. *Issuance of a publicly available report which includes or references all of the above.*
h. *Due diligence procedures that are consistent with internationally recognized policies and procedures such as the Organization for Economic Cooperation and Development (OECD) Draft Due Diligence Guidance for Responsible Supply Chain of Minerals from Conflict-Affected and High-Risk Areas, the ITRI Tin Supply Chain Initiative, and others."*

Although Section 1502 focuses mainly on report requirements for companies that disclose use of conflict minerals from the DRC or adjoining countries, we suggest that the rule-making should also cover requirements for companies that disclose that their products are "DRC conflict-free". Companies should be required to justify this claim and to provide information on the supply chain due diligence process. Requiring this kind of disclosure will guard against misleading statements and encourage companies to undertake adequate research into their supply chain. Where companies are able to provide concrete justification of conflict-free status claims, there will be an added benefit of demonstrating to peer companies what is achievable in terms of supply chain realignment by a company or its suppliers.

Maintain flexibility to adapt to emerging standards and good practices

A number of initiatives are underway to establish new standards and best practices for minerals supply chain transparency and management. We therefore encourage the SEC to maintain the flexibility to adapt the disclosure requirements as more is understood about the conflict minerals issue and possible solutions, and supply chain management for these mineral develops and improves.

We believe that appropriate rulemaking by the SEC in this matter will not only mitigate corporate and investor risk, but can also contribute to ending the atrocities being committed against the people of the DRC. We will continue to work with companies in finding ways to promote supply chain transparency and management.

Sincerely,

NEI Investments

Robert Walker
Vice President, ESG Services

cc:
Pierre Tardif
Chair of the Board of Northwest & Ethical Investments Inc., general partner of Northwest & Ethical Investments L.P.
John Kearns
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