March 17, 2017

Mr. Michael S. Piwowar
Acting Chairman
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Comments on Reconsideration of Conflict Minerals Rule Implementation

Dear Chairman Piwowar,

Prompted by human rights issues in relation to minerals sourced from the Democratic Republic of Congo (DRC) and the adjoining countries, Japan Electronics and Information Technology Industries Association (JEITA) has taken an active part in international efforts to realize responsible minerals sourcing. JEITA, the largest electronics association in Japan representing manufacturers of components through consumer electronics and industrial equipment, welcomes this call for comments from the U.S. Securities and Exchange Commission (SEC) in relation to its concern that the SEC conflict minerals rule might be causing a *de facto* boycott of minerals from some parts of Africa.

JEITA began discussing the conflict minerals issue around the time when the Dodd Frank Wall Street Reform and Consumer Protection Act (DFA) was formulated in 2010, setting up a Responsible Minerals Trade Working Group in 2011. The Working Group immediately concluded a memorandum of understanding with the Conflict-Free Sourcing Initiative (CFSI), and has since tackled the issue from the basic stance of (1) recommending the use of a single industry format for downstream companies (the CFSI Conflict Minerals Reporting Template) to ensure efficient due diligence; (2) supporting the CFSI's CFS program and mutual recognition program and identifying smelters and refiners to the greatest possible extent; and (3) supporting responsible sourcing from the DRC and the adjoining countries. JEITA submitted comments to SEC in March 2011 supporting Section 1502 of the DFA, and discussed the effective operation of SEC's conflict minerals disclosure rule with SEC conflict minerals officers in November 2011 and March 2016.

Concerns and Issues

DFA Section 1502 (the conflict minerals provision) and the conflict mineral disclosure rule developed by SEC in response to Section 1502 gave clear direction to companies' efforts to deal with the conflict minerals issue and prompted the creation of the CFS program and

other common frameworks spanning multiple industries. We are concerned that removing the legal framework at this point might stall these ongoing programs.

On the other hand, many JEITA member companies have conducted conflict mineral inquiries—tracing back up the supply chain to identify processing facilities—since 2013, and what we have learned over the last four years is that it can be extremely complicated and difficult to go through companies' extremely numerous suppliers (more than 10,000 in the case of some big companies) to trace the multiple supplier layers (more than10 layers for some downstream companies). However, because some companies impacted by the conflict minerals provision are engaging in behavior counter to the provision's objectives, the provision is causing unintended harm. Such behavior includes the requirement of conflict-free guarantee and elimination of certain smelters/refiners in a short period of time.

Also, many processing facilities are reluctant to take Conflict-Free Smelter(CFS) audit, and in many cases it is still extremely difficult to switch over all processing facilities to CFS facilities in a short period of time. In the Working Group, member companies continue to approach smelters/refiners directly to encourage them to take CFS audit, but unfortunately, little progress has been made. There are also companies along the supply chain that are not prepared to cooperate in identifying processing facilities, while some small and medium enterprises can't exercise enough leverage over their suppliers. As a result, it is still nearly impossible to identify all smelters/refiners in a short period of time.

Given this situation, if suppliers are forced to identify all processing facilities and ensure that all the products they purchase are 100 percent conflict-free, they may well cover up unconfirmed processing facility information and information on non-CFS smelters/refiners. This would hamper the drive to identify as many smelters/refiners as possible and encourage them to receive CFS validation. The other danger is that because the above demands are often even stricter in relation to products from conflict regions, some companies end up boycotting products from conflict regions.

Suggested Solutions

(a) Retain and improve laws and regulations
JEITA would like to see the existing conflict mineral disclosure rule retained or an alternative instituted in its place. If the existing rule is retained, however, we suggest making improvements such as incentivizing those companies that use conflict-free smelters sourcing from the Covered Countries to avoid the kind of unintended harm noted above.

• Revisit Step 2 in the conflict mineral disclosure rule

Step 2 obligates companies to undertake due diligence if their conflict minerals are determined to have originated in the DRC or adjoining countries ("Covered Countries"), and submit a Conflict Minerals Report (CMR) to SEC concerning those minerals. To report conflict minerals as "conflict-free" requires an independent third-party CMR audit. As a result, some companies wishing to avoid the burden of doing due diligence, creating a CMR, and having it audited are asking suppliers not to source their minerals from the Covered Countries, causing a *de facto* ban.

However, if a processing facility has obtained CFS certification, this proves that it has already done due diligence and is conflict-free. In Step 2, even for minerals from Covered Countries, it would therefore present no problem to change the rule to make due diligence unnecessary if the processing facility has acquired CFS validation. This would encourage US listed companies to procure minerals from the Covered Countries as long as processing facilities are CFS-compliant, which would in turn incentivize efforts in conflict regions to become conflict-free.

(b) Avoid inappropriate demands on suppliers
To ensure that Section 1502 does not cause unintended harm, something needs to be done—issuance of guidance on what constitutes reasonable inquiry from the US government, for example—to prevent downstream companies from making the kinds of inappropriate demands of suppliers such as requiring them to not source any minerals from Covered Countries, which place an excessive burden on small and medium enterprises in particular.

JEITA would like to thank you for the opportunity to share our thoughts. We stand ready to work with you to advance responsible sourcing of minerals.

Sincerely,

Japan Electronics and Information Technology Industries Association (JEITA)