March 17, 2017

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: COMMENTS ON RECONSIDERATION OF DODD-FRANK SECTION 1502, THE CONFLICT MINERALS RULE

Dear Mr. Fields:

The Society for Corporate Governance (the "Society") appreciates the opportunity to respond to the Reconsideration of Conflict Minerals Rule Implementation issued on January 31, 2017 by the Securities and Exchange Commission (the "SEC" or the "Commission").

Founded in 1946, the Society is a professional membership association of more than 3,300 corporate secretaries and in-house attorneys and governance professionals who serve approximately 1,200 public companies of most every size and industry. Society members are responsible for supporting the work of corporate boards of directors and the executive management of their companies on corporate governance and disclosure matters.

The Society submitted earlier comment letters dated March 3, 2011 and June 21, 2011. This letter responds to the SEC's January 31, 2017 request for comments on the Rule as to whether it should be eliminated because it has failed to achieve its intended purpose. We also respectfully request that the SEC suspend the requirement for companies to file a Form SD in May 2017 while reconsideration of the Rule is pending.

The Society believes the practical obstacles to effective supply chain transparency and due diligence efforts required by the Conflict Minerals Rule has caused U.S. issuers to source needed commodities from other nations. Thus, it has further impoverished many Congolese and exacerbated the very conditions that the Rule was intended to combat. It is unlikely the Rule could be revised to ameliorate its negative unintended consequences and, therefore, justify the substantial compliance costs imposed on issuers.

The Rule Has Failed in its Intended Purpose

While the Society supports the goal of eliminating human rights abuses in the Democratic Republic of the Congo (the "DRC" or "the Congo") and neighboring countries and appreciates the Commission's efforts to implement the Congressional mandate regarding conflict minerals, the Rule's disclosure and reporting obligations for issuers have not improved the human rights situation in the DRC. Instead, the Conflict Minerals Rule "set off a chain of events that has

propelled millions of miners and their families deeper into poverty."[1] The Rule has substantially reduced economic opportunity in the relevant communities thereby exacerbating the circumstances that promote participation in local armed groups responsible for human rights abuses.[2]

The Rule requires issuers which use conflict minerals in their products to perform due diligence regarding the provenance of such minerals and, under certain circumstances, file a Conflict Minerals Report. As a practical matter, the lack of governmental capacity and transparency in the DRC's mining sector effectively prevents issuers from making the representations necessary to assert their products are "DRC conflict free." Because the statute (and Rule) create reputational risk to a reporting company,[3] sourcing outside of the DRC protects an issuer's reputation.

According to the Washington Post, many issuers are simply eschewing the DRC as a source of needed commodities, creating a "de facto embargo" against the DRC and other relevant countries. For example, the article notes that "the smelting companies that used to buy from eastern Congo have stopped…No one wants to be tarred with financing African warlords…"[4] The rules have inadvertently incentivized smelters and suppliers to leave the Congo which has devastated smaller artisan mines upon which many Congolese rely. The embargo has driven down prices to the benefit of foreign, non-reporting companies and to the detriment of the mines and workers. Many Congolese miners have been forced to join the militia for paid work.

The recently completed EU Conflict Minerals Regulation[5] is illustrative to the U.S. experience in two important ways: 1) the EU regulation requires compliance higher up the supply chain including EU smelters and direct importers who have greater visibility into the ultimate source of the relevant minerals, and 2) the EU regulation has a global focus and is not focused solely on the DRC and surrounding region. The broader geographic scope of the EU regulation is presumably intended to avoid the effective trade embargo caused by the SEC Rule, and this should be instructive. Notwithstanding the EU's global focus, there remains a lack of effective tools and processes to allow companies to credibly determine whether they have minerals from the DRC in their supply chain and to represent their products as "conflict free." In addition, we believe that the absence of effective tools still is likely to cause companies subject to the EU framework to seek non-DRC sourcing alternatives; potentially exacerbating poverty in the DRC.

The Disclosure is of Questionable Value and Compliance Costs Are Substantial

Most issuers do not purchase the covered minerals or products containing them directly from the miners or others closely connected to the source of production. An issuer's relative

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[1] "How a well-intentioned U.S. law left Congolese miners jobless," November 30, 2014, Washington Post; "How Congress Devastated Congo," David Aronson, August 7, 2011, New York Times

[2] Open Letter (signed by 70 academics, human rights activists and private individuals), https://ethuin.files.wordpress.com/2014/09/09092014-open-letter-final-and-list.pdf, cited in "How Dodd-Frank is Failing Congo", Foreign Policy, Lauren Wolfe, February 2, 2015, accessed February 22, 2017, http://foreignpolicy.com/2015/02/02/how-dodd-frank-is-failing-congo-mining-conflict-minerals/

[3] https://www.sec.gov/rules/final/2012/34-67716.pdf, p. 9

[4] "How Congress Devastated Congo," David Aronson, August 7, 2011, New York Times

[5] https://www.ropesgray.com/newsroom/alerts/2016/June/EU-Reaches-Political-Understanding-on-Conflict-Minerals-Regulation-An-Overview-and-Take-aways.aspx

remoteness from the production source can place a reporting company at the mercy of suppliers who may not be willing to provide accurate or relevant information and, who, in turn, may be relying on companies that are not even in privity with the reporting company. Indeed, as noted by a recent Harvard Business School study based on the first three years of reporting data, "most notable brands are typically several tiers removed from actual smelters and mining sties that produce the minerals that go into their products…[companies] need to survey their suppliers and persuade them to survey *their* suppliers (emphasis in original)…if suppliers don't bother to respond…or cannot persuade their own supplier to respond, the inquiry grinds to a halt, leaving the company in the dark."[6] And the data bears this out: 80% of companies reviewed by the study "admitted that they were unable to determine their raw materials' country of origin."[7]

The Society was unable to establish a range of compliance costs, but the experience of one large-cap member is illustrative:

> Annually, the Company's Conflict Mineral reporting compliance efforts span over approximately 7 months (Dec – June) with about 300 suppliers in scope, and 80-100 employees involved through our Procurement group. . .The cost of compliance is the sum of the contract costs, Supplier Relationship Manager time and training costs, the audit of our services vendor, Core Team time spent reviewing the final smelter lists and pursuing issues, drafting our SEC filing, reviewing with senior supply chain and functional management, and outside counsel review.
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> The quality of the information, and hence our transparency, is not significantly increasing year over year, since many suppliers simply pass on to us all the smelters listed by all of their suppliers. Thus, with only about 400 smelters in existence globally, we consistently see more than 300 smelters appearing on lists from our suppliers. This simply cannot be the number used for the Company's products, since our use of [the covered minerals] is minuscule compared to major users such as consumer electronics, telecommunications, and automotive companies.

The opacity of the mineral supply chain, the likelihood that an issuer's connection to the production of the covered mineral is very attenuated and the surprisingly large effort required to try to overcome these difficulties results in high compliance costs and information of questionable relevance and accuracy. It is evident that such disclosure is of limited value.

Summary

For these reasons, we respectfully request that the SEC repeal the Rule at its earliest opportunity, and in any event, issue guidance to relieve companies of the obligation to file a Form SD in May 2017.

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[6] "80% of Companies Don't Know if Their Products Contain Conflict Minerals," January 5, 2017, Harvard Business Review; https://hbr.org/2017/01/80-of-companies-dont-know-if-their-products-contain-conflict-minerals
[7] Ibid.

Respectfully submitted,

Darla C. Stuckey
President and CEO
The Society for Corporate Governance

cc: Michael Piwowar, Acting Chairman
Kara Stein, SEC Commissioner
Mr. Keith Kellogg, Acting National Security Advisor, National Security Council
Mr. Rex Tillerson, Secretary of State