

November 10, 2011

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

**RE: Post-Round Table Comments Regarding File Number S7-40-10 on Conflict Minerals**

Dear Chairman Schapiro,

The Conflict Mineral Round Table discussion on October 18, 2011, raised a critical topic that appeared to be of interest to the Commission and on which the Multi-Stakeholder Group (MSG) had not yet commented: the appropriate form of audit for Conflict Mineral Reports (CMR). We would also like to expand upon our position on the timing of filing the reports, including the question of whether the reporting date of the reports should be synchronized for all issuers in order to minimize the costs and provide better information for disclosure. Lastly, we clarify our position regarding “stockpiles,” on which we commented in our August 22<sup>nd</sup> letter.

We are a diverse set of stakeholders including issuers, socially responsible and faith-based investors, and non-governmental organizations. As in the past, the stakeholders who are signing this letter vary slightly from the signatories of the previous letters.<sup>1</sup>

All past letters that have been submitted by this group are linked below in case those letters need to be referenced.

- November 17, 2010 ([link here](#))
- March 2, 2011 ([link here](#))
- August 22, 2011 ([link here](#))

We appreciate the opportunity to submit these comments, and we look forward to providing any additional information you may need for the rule-making process. If you need to contact us for any reason, Patricia Jurewicz ([patricia@sourcingnetwork.org](mailto:patricia@sourcingnetwork.org) and 415.692.0724) is our point of contact.

Sincerely,

Co-chairs:

Darren Fenwick  
Senior Government Affairs Manager  
Enough Project

Tim Mohin  
Director, Corporate Responsibility  
Advanced Micro Devices

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<sup>1</sup> Organizations that are signing on to one of our Multi-Stakeholder letters for the first time are: Loyola University Chicago; Marianist Province of the U.S.; Mercy Investment Services, Inc.; Spring Water Asset Management, L.L.C.; and Sprint.

**Confirmed signatures for the multi-stakeholder letter:**

Advanced Micro Devices, Inc.  
Africa Faith and Justice Network  
Boston Common Asset Management, LLC  
Calvert Asset Management Co., Inc.  
Congo Global Action  
Enough Project  
Falling Whistles  
Ford Motor Company  
Free the Slaves  
Future 500  
General Electric Company  
Hewlett-Packard Company  
Interfaith Center on Corporate Responsibility  
Jesuit Conference  
Jewish World Watch  
Loyola University Chicago, Shareholder Advocacy Committee  
Marianist Province of the U.S.  
Mercy Investment Services, Inc.  
Microsoft  
Missionary Oblates of Mary Immaculate - Justice, Peace and Integrity of Creation Office  
Responsible Sourcing Network, a project of As You Sow  
Spring Water Asset Management, L.L.C.  
Sprint  
Sustainalytics  
Trillium Asset Management  
Tri-State Coalition for Responsible Investment  
Unity Minerals, Inc.  
US SIF: The Forum for Sustainable and Responsible Investment



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ASSET MANAGEMENT, LLC



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WORLD  
WATCH



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## Auditing

In our November 2010 and March 2011 comments, we provided recommendations for upstream and downstream processes that should be presumed to constitute reliable due diligence, while recommending that the regulations should not dictate a prescribed process to be followed by all issuers. We did not provide detailed recommendations on the scope of the third party audit required in the statute, so we are addressing that issue here. In November, we recommended: “An independent third party audit of the Person’s due diligence report, which includes a review of the management systems and processes.”

If conflict minerals in or necessary to the production of an issuer’s products originate in the DRC region, Section 1502 obligates issuers to perform due diligence to determine whether trade in those minerals supported the conflict in the DRC. This determination depends on an examination of both the upstream process (from mine to smelter/refinery) and the downstream process (from smelter to issuer). Most issuers will rely on an industry-wide process such as the EICC-GeSI Conflict Free Smelter Program to verify whether a smelter’s ore supply originates in the DRC region and, if so, whether it supports the armed conflict. These audits are performed by independent third parties. Issuers should be able to rely on such an industry-wide process to avoid burdensome and complicated administration of repetitive audits.

Because investors and other stakeholders need to be able to trust that issuers’ CMRs accurately describe the due diligence process employed by the issuers and that the CMR includes key components to effectuate the public disclosure intended by the statute, the statute provides for a certified, independent, third-party audit of the report. Our view is that the statute assigns to the SEC (not the auditor) the responsibility to determine whether the due diligence process used by the issuer is reliable, and members of the investment and human rights communities may comment to the SEC on reliability, based on their evaluation of the CMRs.

Therefore, it is important that the auditor audit the CMR to ensure that (1) it accurately describes the issuer’s due diligence process as it was applied, and that the results of that process are fairly stated; and (2) the report evaluates (identifies) the downstream systems and processes the issuer has employed to determine the origin of the ores to the smelter level, and the upstream due diligence processes the issuer has in place or has relied on to determine the origin of ores from the smelter to the mine of origin when sourcing from the DRC or adjoining countries, or the systems and processes that support an issuer’s claim of “DRC conflict free.” We recommend that the audit scope not include verification of the ultimate conclusions of the report, but only that the process was applied as described. Such an evaluation is consistent with the processes (which can be implemented through an industry initiative or directly) outlined in our previous submission on March 2, 2011 ([found here](#)) in answers to Question 27 (p. 6) describing the reasonable country of origin inquiry used and Question 50 (p. 10-11) the due diligence process for presumed reliability.

The scope of the audit should be limited to verification of the policy, process and information used by the issuer in conducting its due diligence. We recommend that the SEC clearly state in the final rule that the audit scope is of the issuer’s report and not of the supply chain, which will minimize cost and prevent auditors from broadening the scope of the audits to mitigate their perceived or real liability.

The GAO Government Audit Standards (GAGAS) provides two audit options the MSG deems appropriate for an issuer to utilize to audit the CMR: 1) attestation engagement; and 2) performance audit. We strongly suggest determining which option to utilize should be left to the discretion of the issuer and its auditor. Flexibility for issuers to select an appropriate audit methodology will help to create a larger pool of potential auditors and reduce audit costs and administrative burdens.

## Timing and Accessibility

We request that the SEC rule synchronize the collection of the information contained in the Conflict Minerals Reports from all issuers on a calendar year basis. The MSG recommends that all issuers begin exercising and reporting due diligence on the source and chain of custody for the subject minerals used in their products on a common calendar date.

Having one date when all issuers begin exercising the necessary due diligence of their minerals would offer integrity and consistency throughout the various supply chains, as well as reduce the reporting burden on issuers, especially those one or more tiers into the supply chain. Since component manufacturers and others throughout the supply chain provide products for many customers who have different fiscal years, efficiencies and accuracy would increase if the whole supply chain worked towards a common deadline.

The rule should require each filer to make the Conflict Minerals Report easily accessible to investors through a variety of means (e.g. a prominently displayed link on a corporate website, etc.).

### Stockpiles

Regarding the letter the MSG group submitted dated August 22, 2011 ([found here](#)); we want to add a clarification to our comment on “Stockpiles.” Original language with mark-up reflecting our intent (new language in bold):

“Stockpiled minerals and other existing minerals in inventory on hand or at a warehouse prior to **effective date of this rule, January 1, 2012** should be exempt from due diligence reporting. Issuers must be able to document that the minerals in the stockpiles pre-dated the **effective date of this rule, start date of January 1, 2012**. ~~These stockpiled minerals should not be allowed to be designated “conflict free” unless there is sufficient proof that the stockpiled minerals did not originate from the DRC or adjoining countries.”~~ **Although these materials are exempt from reporting, if an issuer can adequately document that the minerals in the stockpiles are ‘conflict free’ based on due diligence adhering to international norms that was conducted prior to the effective date of this rule and that issuer chooses to voluntarily submit such due diligence, then these minerals could be designated as ‘conflict free’.**