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September 11, 2013

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Petition for Rulemaking – Conflict Minerals

Dear Ms. Murphy:

This is a petition for rulemaking pursuant to Rule 192(a) of the Commission's Rules of Practice.

On August 22, 2012, the Commission adopted[1] the so-called "Conflict Minerals Rules" pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[2] For a number of reasons, compliance with the Conflict Minerals Rules is proving more involved and time-consuming than we believe the Commission, or for that matter Congress, anticipated. As a result, we petition the Commission to permit, for a temporary period, alternative disclosure in lieu of the disclosure currently required by the Conflict Minerals Rules.

The four conflict minerals – columbite-tantalite, cassiterite, gold and wolframite – are more common than most registrants expected. While some uses easily were foreseen, particularly in the electronics industry, other uses were not, and a significant number of registrants that initially did not expect to have compliance obligations under the Conflict Minerals Rules have learned, or are in the process of learning, that they in fact do. Moreover, many registrants have found that their existing infrastructure and resources simply are ill-equipped for compliance with the Conflict Minerals Rules, in many cases requiring the redeployment or hiring of personnel and the modification of purchasing processes, including the information technology systems supporting those processes, in order to accommodate identifying products that contain conflict minerals and tracking the compliance of the suppliers of those products.[3] For registrants with substantial foreign footprints, the work has been even greater, because, unlike in the U.S. where many suppliers are getting numerous requests from customers with respect to product content and upstream compliance, it is not unusual for a registrant's foreign operations to deal with suppliers that never have heard of the Conflict Minerals Rules. Finally, the hoped-for "silver bullet" – sourcing conflict minerals from recycled and scrapped

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[1] Release No. 34-67716 (Aug. 1, 2012).
[2] Public Law 111-203, 124 Stat. 1376 (July 21, 2010).
[3] A recent study by PriceWaterhouseCoopers LLP stated that 12.6% of the respondents indicated that they had more than 5,000 direct material suppliers, making compliance a significant task. PriceWaterhouseCoopers LLP "*Conflict minerals survey: How companies are preparing*" 13 (July 2013) ("PWC Study").

materials and from certified smelters – simply has not evolved as expected and is not a viable near-term alternative for many registrants.[4]

In addition, the external resources available to assist registrants in compliance are limited. At the time that the rules were adopted, only a handful of individual consultants existed who had any meaningful experience. Most often those consultants had some involvement with the OECD pilot group.[5] While subsequently several consulting firms, as well as all of the Big Four accounting firms, have developed expertise, that expertise remains limited and is not yet fully experienced. In-house expertise is even more limited, and we are unaware of any registrants that had meaningful expertise at the time the Conflict Minerals Rules were adopted other than those companies participating in the OECD pilot group and a few others.

Based upon our experience over a broad range of registrants in a cross-section of industries, at this point in time we are unaware of any registrant with a significant number of products that include conflict minerals that has the ability to comply completely with the Conflict Minerals Rules.[6] We note that compliance in effect entails certifying that beginning January 31, 2013, and at all times subsequent, the registrant had systems in place that fulfill the mandate that it conduct in "good faith a reasonable country of origin inquiry."[7] As a result, many of the first reports, which are due in May 2014 and generally will cover activities subsequent to January 31, 2013, will either be of debatable accuracy or will be qualified to an extent that they will not be helpful to fulfilling the intent underlying the Conflict Minerals Rules. We believe that this is not in either the Commission's best interests or in the best interests of the investors relying on the reports filed with the Commission.

In adopting the Conflict Minerals Rules, the Commission recognized that implementation might be difficult, and the Conflict Minerals Rules permit a "DRC conflict indeterminable" conclusion as well as, under certain circumstances, the postponement of the audit requirements. While these accommodations are good ones, we do not think that the Commission fully appreciated how difficult it would be, particularly for registrants with substantial foreign footprints, to design and implement the systems necessary to identify the content of products and

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[4] According to the Government Accountability Office, only 26 of the 278 smelters it identified had successfully completed a Conflict Free Smelter Program Audit. Government Accountability Office, *"SEC Conflict Minerals Rule: Information on Responsible Sourcing and Companies Affected"* 29 (July 2013).

[5] For a general discussion of the pilot group and its most recent efforts, see Organisation for Economic Co-operation and Development, *"Downstream Implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Final downstream report on one-year pilot implementation of the Supplement on Tin, Tantalum and Tungsten"* (Jan. 2013).

[6] See Mont, *"Conflict Minerals Rule Compliance Off to Slow Start,"* Compliance Week 14-15 (June 2013). We note that many registrants did not in any meaningful respect even commence their compliance efforts until after January 31, 2013, with some waiting for the resolution of the litigation over the Conflict Minerals Rules given the cost and complexity of compliance. At the time of the PWC Study, only 9.2% of the respondents even had a conflict minerals policy, an essential cornerstone under OECD guidelines to having a compliant due diligence program, and only 2.3% had completed their reasonable country of origin inquiry and had started due diligence. PWC Study at 10-12.

[7] See Form SD, Item 1.01(a).

perform and track the required due diligence. In this regard, we note that the permitted conclusion of "DRC conflict indeterminable" requires the exercise of the due diligence required by the Conflict Minerals Rules – and, hence, the existence of due diligence systems at all times subsequent to January 31, 2013 – and the permitted conclusion is not a substitute for that due diligence.[8] In addition, to date the due diligence by many registrants has not been particularly successful.[9]

As a result, we petition the Commission to amend the rule governing the required Form SD to permit, for a temporary period, the following alternative disclosure for registrants that are not yet able to comply with the Conflict Minerals Rules:

- A one-year deferral for filing Form SD would be available to any registrant that, commencing with its first Exchange Act periodic report due on or after October 1, 2013, provides in that and subsequent periodic reports until it first files a report on Form SD, detailed status reports on the actions taken to-date and currently anticipated to be taken in order to yield compliance.

- A two-year deferral would be available with respect to coverage of foreign operations where the registrant complies with the requirements for the one-year deferral and thereafter continues to provide detailed status reports on foreign implementation consistent in scope with the status reports filed during the first year. For clarity, foreign implementation would not need to be covered in the status reports during the first year.

- The status reports would be furnished under Exhibit 99.

Attached as *Annex A* to this letter is the specific amendment that we petition the Commission to consider.

We believe that this approach strikes the right balance between the goals underlying Section 1502 and the required disclosure and the practicalities of implementation. It would permit deferral only where a registrant is transparent with respect to its implementation efforts, thereby providing investors the opportunity to appropriately weigh the information being provided in the context of investment decisions. Also, it would require registrants that are far enough along in the process to file a Form SD to do so, and, in fact, would encourage registrants to file a Form SD as soon as practicable in order to avoid the additional disclosure. Lastly, this approach would require status reports in the near term, thus better informing investors with respect to the status of compliance efforts with respect to the Conflict Minerals Rules.

It is important to note that the status reports would be required to be detailed. The amendment requires the status reports to be sufficiently comprehensive so that investors would have a transparent view into the critical aspects of implementation. It would be inadequate, for

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[8] See Form SD, Item 1.10(d)(5), "after exercising due diligence as required by paragraph (c)(1). . . ."
[9] Registrants have reported to us response rates as low as 10% in their initial inquiries of suppliers.

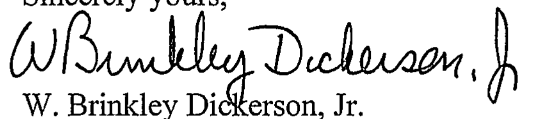
example, for a registrant to simply provide generic disclosure that does not substantiate its good faith efforts to obtain compliance.

We note that the nature of the amendment – to some extent a deferral of an effective date – does not require a notice and comment period under Rule 192(b) of the Commission's Rules of Practice, and we urge the Commission's prompt action.

We want to emphasize that the amendment that is being requested is consistent with the Commission's core principles. In this regard, the Commission has had a long-standing and successful practice of requiring good disclosure by registrants, not premature and less-than-compliant disclosure that could be harmful to both registrants and investors.

We look forward to the Commission's action on this petition and stand ready to answer any questions that the Commission or its staff has.

Sincerely yours,



W. Brinkley Dickerson, Jr.

cc: Mary Jo White, Chairwoman
Luis A. Aguilar, Member
Daniel M. Gallagher, Member
Michael S. Piwowar, Member
Kara M. Stein, Member
Keith F. Higgins, Director, Division of Corporation Finance

Annex A

Form SD would be amended by adding a new instruction at the end of Item 1.01:

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(6) Registrants complying with this instruction shall not be required to file reports prior to (a) May 31, 2015, with respect to products manufactured within the United States, and (b) May 31, 2016, with respect to products manufactured outside the United States. To comply with this instruction a registrant must, commencing with its first periodic report initially due under Section 13(a) or 15(d) of the Exchange Act on or after October 1, 2013, furnish as an Exhibit 99 to that and each subsequently filed periodic report until it files its first Form SD a detailed status report on the actions taken to date and currently anticipated to be taken by the registrant in order for the registrant to comply with its Form SD filing obligations. At a minimum, this disclosure should include:

i. Confirmation that the registrant does not in good faith believe that it currently is able to comply fully with the Form SD requirements.

ii. The title of the individual with day-to-day oversight responsibilities for compliance with Form SD.

iii. If a management committee is active in overseeing compliance, the titles of the members of the committee and a brief summary of its activities, highlighting activities since the prior report.

iv. The identity of each consulting firm retained by the registrant to assist in any material respect in facilitating compliance and a description of the scope of its engagement.

v. The status of the development by the registrant of a conflict minerals policy and its expected date and location of publication.

vi. The identity of the board (or similar) committee with ultimate oversight of registrant's compliance with Form SD and the date of management's most recent report to the committee.

vii. The status of the registrant's review of its products to determine whether they contain conflict minerals, highlighting changes since the prior report.

viii. The status of the registrant's reasonable country of origin inquiry and discussions with its suppliers as a whole regarding compliance, including, with respect to its 10 largest suppliers (by dollar amount of purchases during its most recently completed fiscal year), a summary of the status of the inquiry and discussions with each such supplier (provided that the

registrant shall be permitted to use confidential labeling in lieu of naming such suppliers).

ix. The status of any information technology or other process modifications being made by the registrant to facilitate compliance, highlighting changes since the prior report.

x. The registrant's current timing expectations with respect to being able to file a compliant Form SD, highlighting key gating issues.

Registrants that are foreign private issuers may comply with this instruction by filing reports on any available form no less frequently than every 120 days, commencing within 120 days after October 1, 2013.