Note of Clarification

On 29 July 2011, stakeholders in the ICGLR-OECD-UN GoE on the DRC forum on implementation of due diligence submitted a joint letter to the U.S. Securities and Exchange Commission. This note provides additional information related to the joint letter.

Background

The Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (the Guidance) was developed through a multi-stakeholder process over the last two years with in-depth engagement from industry, civil society, African countries, as well as the United Nations Group of Experts on the DRC and the World Bank.

The Guidance was approved in December 2010 by two official OECD bodies, the Investment Committee and the Development Assistance Committee. It has been recently turned into a formal OECD Council Recommendation adopted by forty-one OECD and non-OECD countries at the Council Ministerial Meeting held on 25 May 2011 under the Chairmanship of the U.S. Secretary of State, Hillary Rodham Clinton.

The stakeholder letter to the United States Securities and Exchange Commission

All the parties involved in the development of the Guidance - industry, civil society organisations, OECD and partner countries - recognise that Section 1502 of the Dodd Frank Act represents a tremendous opportunity to change the dynamics that perpetuate conflict and instability in the DRC and adjoining countries; implementation of Section 1502 will achieve long-term benefits that could not otherwise be realised for many years. They also appreciate that the rules will be crucial to ensuring the workability of a framework which affects all companies throughout the minerals supply chain well beyond U.S. borders.

At a meeting on the implementation of the Guidance held on 5-6 May 2011, co-hosted by the International Conference on the Great Lakes Region, the OECD and the United Nations Group of Experts on the DRC, stakeholders asked the OECD Secretariat to assist them to explore avenues to ensure that national and international instruments are implemented in a workable manner that is consistent with the common objectives of those instruments. The Guidance and Section 1502 of the Dodd-Frank Act both seek to break the link between conflict and trade in minerals, and contribute to creating the enabling conditions to starve the black market, defund the war, and ultimately lead to the creation of a legitimate mining sector in the DRC. Greater transparency in the mineral supply chain is regarded in both instruments as the means through which such objectives can be achieved.

Both industry and civil society organisations consider that given the interrelation between the implementation of the U.S. law and the Guidance, it is worthwhile to develop proposals that, while fully

preserving the integrity of the specific requirements of the two instruments, would result in a coherent framework providing incentives for companies to continue responsibly sourcing from the DRC and adjoining countries in full compliance with all the requirements set forth under the U.S. legislation. This would enable companies to meaningfully work with their suppliers outside U.S. borders and companies and civil society organisations to communicate a set of clear inter-governmentally backed expectations about due diligence. Both civil society and industry believe that the proposed solutions put forward in the letter will enable issuers to constructively engage with minerals suppliers to meet their disclosure obligations under the law and create the right incentives to avoid driving the black market further underground and help creating legitimate mining sector in the DRC.

With regard to specific points

The scope of the letter is limited to aspects of the U.S. law which directly intersect with the Guidance or for which the internationally agreed standards contained in the Guidance would be a pertinent and useful reference. The purpose is to avoid interpretations that would lead to contradictory results, thus undermining the pursuit of the common objectives of the U.S. law and the OECD Recommendation on Due Diligence Guidance.

Definition of due diligence: In their submission to the United States Securities and Exchange Commission dated February 28, 2011, United States Senator Durbin and Congressman McDermott explained that they intentionally left the term due diligence undefined "as there are several evolving standards for due diligence, the most notable of which has been established by the Organization for Economic Cooperation and Development (OECD)". The Congressmen encouraged "the SEC to cite the OECD due diligence standard as an acceptable starting point, pending forthcoming Commerce Department and GAO studies on its effectiveness". The Recommendation on Due Diligence Guidance provides the internationally agreed definition of due diligence as the "on-going, proactive and reactive process through which companies can ensure that they respect human rights and do not contribute to conflict". OECD standard is a US standard. The United States adopted the Recommendation on Due Diligence Guidance together with other 40 OECD and non-OECD countries. The Recommendation also stipulates that the Guidance "sets out the steps companies should take to identify and address risks". The Guidance further clarifies that "[I]n spite of the fragmented production process in the supply chain, and independent from their position or leverage over suppliers, companies are not insulated from the risk of contributing to or being associated with adverse impacts occurring at various points in the mineral supply chain. Because of this, companies should take reasonable steps and make good faith efforts to conduct due diligence to identify and prevent or mitigate any risks of adverse impacts associated with the conditions of mineral extraction and the relationships of suppliers operating in conflict-affected or high- risk areas. The objective of the Guidance, in line with the U.S. law, is to promote progressive improvement to due diligence practices through constructive engagement with suppliers.

Due diligence as the means to generate the information issuers must disclose and determination of reliable due diligence processes under Section 1502. There is a close relationship between the implementation of the reporting requirements under Section 1502 and the implementation of the Guidance. The Guidance can help issuers and other companies operating beyond U.S. borders to put in place a due diligence process which would enable them to work with their suppliers to foster transparency in their supply chains necessary to generate the information issuers must disclose under Section 1502 of the Dodd-Frank Act, namely the measures taken to exercise due diligence, the description of the products that are not DRC conflict free, the facilities used to process the conflict minerals, the country of origin of the conflict minerals, and the efforts to determine the mine or location of origin with the greatest possible specificity. In this respect, the stakeholder letter invites the U.S.

Securities and Exchange Commission to refer in the implementing rules to the OECD and UN GoE due diligence recommendations as providing reliable due diligence processes.

Other requirements and quality reviews. The stakeholder letter is without prejudice to the continuing reporting quality reviews and any other specific additional requirements under Section 1502 of the Dodd Frank Act. We believe that the peer learning forum hosted by the OECD where participating companies will report on the specific measures they take to implement the Guidance will offer useful elements to assess the effectiveness of the OECD standard as well as complementary information to establish standards of best practices. This further reinforces the complementary and mutually supportive nature of these two instruments.

Issues related to the categorisation of products as 'not DRC conflict-free'. The letter rests on the principle that all companies in the supply chain should fully and immediately carry out due diligence in accordance with the Guidance to be able to generate the information which issuers are required to disclose under the U.S. law.

Under Section 1502, issuers must include in their report to the SEC a description of the products manufactured or contracted to be manufactured that are not DRC conflict free ('DRC conflict free' is defined to mean the products that do not contain minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country). Under the law, "the term ''armed group'' means an armed group that is identified as perpetrators of serious human rights abuses in the annual Country Reports on Human Rights Practices […]".

The Guidance recommends disengagement whenever risks of serious human rights abuses by any party and where risks of benefiting or financing non-state armed groups are identified in the supply chain. The Guidance allows trade to continue where risks of benefiting or financing **public or private security forces that are not involved in serious human rights abuses** are identified, provided that a risk management plan is immediately adopted and implemented by upstream suppliers and that significant measurable improvement is demonstrated within six months from the adoption of the risk management plan. If within six months from the adoption of the risk management plan there is no significant measurable improvement, issuers and mineral processors should discontinue engagement or suspend the relationship with the supplier for a minimum of three months. Suspension may be accompanied by a revised risk management plan, stating the performance objectives for progressive improvement that should be met before resuming the trade relationship.

Since public or private security forces that are not involved in serious human rights abuses would not qualify as armed groups under Section 1502 of the Dodd-Frank Act, issuers are entitled not to describe their products as "not DRC conflict-free" when the products manufactured or contracted to be manufactured contain minerals sourced in areas where risks of direct or indirect support to public or private security forces as defined by the Guidance have been identified and to which upstream companies from which issuers directly or indirectly supply have responded in accordance with the recommended risk management strategy described above.

It follows that the proposed categorisation of products as 'not DRC conflict-free" is consistent with Section 1502.

In the absence of such a clarification, the U.S. law may be interpreted to imply that companies which adopt and implement a risk management plan to respond to identified risks of direct or indirect support to public or private security forces **that are not involved in serious human rights abuses** would be

nonetheless required to describe their products as “not DRC conflict free”. This is an outcome which industry and NGOs considered would be undesirable.

Interim period. The Guidance does not provide for any interim period for the implementation of due diligence, but does provide for time-bound provisions to respond to identified risks of direct or indirect support to private or public security forces that are not involved in serious human rights abuses. Stakeholders propose that under such circumstances issuers should be allowed to not describe their products as “not DRC conflict-free” only for an interim period, the determination of which is left to the appreciation of the U.S. Securities and Exchange Commission. Such risks may of course arise at any time. Stakeholders propose that after a given period, issuers would no longer be entitled to not describe their products as “not DRC conflict free”. The new proposal deletes the reference to the interim period, since it may generate confusion and erroneously suggest that the implementation of due diligence under the Guidance as well as compliance with U.S law could be delayed.

Positive labelling. Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act provides that a product mat be labeled as DRC conflict-free if the product does not contain conflict minerals that directly or indirectly finance or benefit armed groups in the DRC or an adjoining country. Stakeholders propose the same narrow interpretation of positive labeling. Issuers may label products as “DRC conflict free” when the issuer and the mineral processor know and can show that they do not tolerate nor by any means profit from, contribute to, assist with or facilitate the commission by any party of serious human rights abuses associated with the extraction, transport or trade of minerals and do not provide direct or indirect support to non-state armed groups or public or private security forces.