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By Electronic Mail (rule-comments@sec.gov)

November 23, 2011

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549–1090

Re: File No. S7–40–10; Proposed Release No. 34–63547, Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Conflict Minerals)

Dear Ms. Murphy:

The National Association of Real Estate Investment Trusts® (NAREIT) welcomes this opportunity to respond to the request for comments from the Securities and Exchange Commission (SEC) on the proposing release, pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act).[1]

NAREIT is the worldwide representative voice for real estate investment trusts (REITs) and publicly traded real estate companies with an interest in U.S. real estate and capital markets. NAREIT's members are REITs and other businesses throughout the world that own, operate and finance income-producing real estate, as well as those firms and individuals who advise, study and service those businesses.

We support the fundamental goal of the Dodd-Frank Act to curb human rights violations in the Democratic Republic of Congo and its adjoining countries and commend the thoughtful consideration the SEC has given to the complex aspects of its implementation.

However, in many instances, notwithstanding the SEC's clear efforts in this regard, we believe that the proposed rules, as written, appear to extend beyond the scope of Congressional intent. In this letter, we have attempted to provide specific guidance to the SEC on how to better draft an effective rule by including an instruction to the proposed rules that clarifies that real estate development is not considered manufacturing within the meaning of the rule. That said, we have significant concerns about moving directly from the current proposals to a final rule, and respectfully request that the SEC repropose the regulations after taking into account public comments on the current proposal.

[1] Pub. Law No. 111-203, § 939A, 124 Stat. 1887 (July 21, 2010).

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Real Estate Development Does Not Constitute "Manufacturing" or "Contracting to Manufacture" Within The Meaning of the Law.

The SEC recognized in the proposing release that "it appears…that the Conflict Minerals Provision was not intended to apply to all issuers, but was intended to apply only to issuers that manufacture products."[2] Congressional supporters of Section 1502 confirmed that the provisions are intended to apply only to manufacturers when they noted in a recent comment letter that "Section 1502(b) intended for all *manufacturing companies* that use minerals in their products, regardless of how small the percentage or what label *they manufacture* under, to be required to trace and disclose information on their supply chains. This intention should be reflected in the final regulations."[3] The SEC should not expand the rules beyond the clear legislative intent. If real estate developers are considered 'manufacturers' under the rules, the scope of the law would be extended beyond Congressional intent and be applied to a host of non-manufacturing issuers, including any issuer with the most tangential link to conflict minerals in the course of its business.

We note that the SEC does not propose to define the term 'manufacture' in the proposed rules, noting that the term is generally understood. To demonstrate that the term manufacture is "generally understood," the SEC, by way of example, referenced the definition of manufacture from Webster's Dictionary as "making goods or wares by hand or machinery, especially on a large scale."[4] Real estate development, generally understood to encompass the acquisition of land and related activities that range from renovation, new construction or re-leasing of existing buildings to the purchase and sale of improved land parcels, does not constitute manufacturing either by this definition or by any other generally understood meaning of the term 'manufacture.'

Given that real estate development is outside the realm of manufacturing, it does not constitute 'contract to manufacture' within the generally understood meaning of 'manufacture.' However, we are concerned that, without further guidance from the SEC, the term 'manufacture' could be interpreted very broadly to include traditionally non-manufacturing activities such as real estate-related activities, including development. We urge the SEC to ensure that the proposed rule aligns with Congressional intent by providing clear guidance that real estate development does not constitute manufacturing.

We urge the SEC to include an instruction to the proposed rules that clarifies that real estate development is not considered 'manufacturing' within the meaning of the rule.

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[2] SEC Release no. 34-63547 at 17.
[3] *See* comment letter dated September 23, 2011, from Reps. Howard L. Berman, Donald M. Payne, Jim McDermott, Karen Bass and Barney Frank; United States Congress at http://www.sec.gov/comments/s7-4010/s74010-313.pdf (emphasis added).
[4] SEC Release no. 34-63547 at 17.

NAREIT appreciates the opportunity to comment to the SEC on its proposed rules relating to conflict minerals pursuant to Section 1502 of the Dodd-Frank Act. If it would be helpful to discuss the NAREIT's specific comments or general views on this issue, please contact me at tedwards@nareit.com.

Respectfully submitted,

Tony M. Edwards
Executive Vice President & General Counsel