



September 1, 2011

World Gold Council
10 Old Bailey
London EC4M 7NG
UK

Via email: conflictfreestandards@gold.org

Dear Sir or Madam:

Re: World Gold Council Conflict-Free Gold and Chain of Custody Standards

We are writing in response to the World Gold Council (WGC) request for comments on its Conflict-Free Gold and Chain of Custody Standards¹. We welcome the WGC's initiative to develop conflict-free gold standards, and to open the draft standards to public comment.

With C\$5 billion in assets under management, NEI Investments' approach to investing incorporates the thesis that companies integrating best environmental, social and governance (ESG) practices into their strategy and operations will build long-term sustainable value for all stakeholders, and provide higher risk-adjusted returns to shareholders. Through our company evaluations, our active engagement with the companies in our funds, and our issues research, we have developed considerable insight into good practices and weaknesses in corporate practice with respect to the mining industry, which we endeavour to share in the context of consultations on public policy and standards. Gold miners are strongly represented on Canadian exchanges, and within its funds, NEI Investments has holdings in a number of large gold mining companies. We have well-established ongoing dialogues on ESG issues with several members of WGC.

Conflict-free gold and ESG risk mitigation

Situations in which gold production contributes to the financing of armed conflict are not only unacceptable from a humanitarian perspective, but also expose mining companies to significant operational and reputational risk, in turn creating uncertainty for their investors. The link between mining, processing and trade in minerals and conflict-related human rights abuses in the Democratic Republic of Congo (DRC) has attracted particular attention, and is well documented². The U.S. Securities and Exchange Commission (SEC) proposed rules to implement Section 1502 of the Dodd-Frank Act include

¹ **World Gold Council**. Conflict free standards. [Online] 2011. http://www.gold.org/about_gold/sustainability/conflict_free_standards/

² See, for example: **United Nations Security Council**. Final report of the Group of Experts on the DRC, submitted in accordance with paragraph 6 of Security Council resolution 1896 (2009). [Online] 2010. http://www.un.org/ga/search/view_doc.asp?symbol=S/2010/596; **Business for Social Responsibility**. Conflict Minerals and the Democratic Republic of Congo. [Online] 2010. http://www.bsr.org/reports/BSR_Conflict_Minerals_and_the_DRC.pdf.

NEI INVESTMENTS

T: 604.633.0615 F: 604.633.0619

NEIinvestments.com Toll Free: 1.866.888.0615

500 - 1111 West Georgia Street Vancouver, British Columbia V6E 4T6



requirements for enhanced gold supply chain disclosure that would impact mining companies with downstream customers that fall under SEC jurisdiction, whether or not the mining companies themselves are listed on U.S. exchanges. We have twice submitted comments³ to the SEC on its rule-making, and have engaged companies in our funds in dialogue on the conflict minerals issue. In this context, the WGC's initiative is timely, and we commend the WGC for its efforts to coordinate its work with other conflict-free gold initiatives under development at the Organization for Economic Co-operation and Development and the Responsible Jewellery Council.

Comments on the Conflict-Free Gold Standards

Although we offer some specific suggestions for enhancing the conflict-free gold standards, in general the drafts strike a good balance between reflecting the aspirations of the WGC and recognizing the limitations of what is practicable under the current state of knowledge and practice in the gold supply chain. We see particular value in the following aspects:

- They address the issue of conflict gold globally, as well as responding to the DRC-specific provisions of the Dodd-Frank Act Section 1502. There is a risk that limiting the scope of conflict minerals policy-making to the DRC region will create a situation in which conflict minerals are viewed as being solely an African issue. This could have negative impact for the development of legitimate gold production and livelihoods, not only in the DRC region, but also elsewhere in Africa. The global perspective of the standards also anticipates the possibility that that policy-making focus will switch to gold production in other conflict-prone regions in the future.
- They support the continuing engagement of companies in conflict-prone regions, if they can demonstrate they are operating in a responsible and transparent manner.
- The "Declaration on Mining and Armed Conflict" that prefaces the standards reinforces public human rights commitments made by members of the WGC.
- They incorporate third party audit and verification to validate conflict-free claims.

Clarifying expectations of WGC members

We recommend that the drafts should be revised to clarify whether or not application of the standards is voluntary or mandatory for WGC members. Our understanding of the drafts is that the nine commitments in the "Declaration on Mining and Armed Conflict" apply to all members of the WGC, but it is less clear if companies must carry out the assessments and verifications described in the standards that follow as a condition of WGC membership.

We believe that mandating adherence to conflict-free standards would have reputational benefits for the industry, although a phase-in period would obviously be required to allow time for current WGC members to achieve compliance, and to secure the co-operation of gold refiners.

Completing the assessment even if non-conformance is identified

We note that the ultimate purpose of the standards is to enable companies to make a robust and verifiable claim that gold production is conflict-free, but we see value in companies completing and disclosing the assessment process even if some elements of non-conformance are identified at company level, or in relation to a specific mine.

³ NEI Investments. Re: SEC regulatory initiatives under the Dodd-Frank Act: Specialized Disclosures – Section 1502 – Conflict Minerals. [Online] 2010. <http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-71.pdf>; <https://www.neiinvestments.com/neifiles/PDFs/5.5%20Public%20Policy%20and%20Standards/Section%201502%20Conflict%20Minerals.pdf>



The Conflict-Free Gold Standard states repeatedly that if non-conformance is found, this results in termination of the assessment. We recommend that WGC members should be required to complete the assessment as fully as possible, even if some instances of non-conformance are found during the process. By completing the assessment, WGC members will be able to demonstrate how close or far they are from complete compliance with the standard. The WGC will also be able to identify industry-wide patterns of non-conformance on specific issues or in specific regions, allowing it to target these areas for future work. It will also be able to identify companies that have found solutions to issues that continue to challenge peers.

Public disclosure of assessment results

It is unclear from the drafts if WGC members will be required to publish their assessments, as well as submitting them to third party verification. We believe there would be value in asking WGC members to disclose their assessments.

The proposed standards present an opportunity to increase transparency regarding the role of large mining companies in the gold supply chain. As an investment institution seeking to integrate material environmental, social and governance (ESG) considerations into our decision making, access to consistent data allows us to compare the risk exposure of public companies across whole sectors of industry. Disclosure of the assessment results would be useful to us in this context, and would also be a way to communicate on the conflict status of companies and specific mines to other stakeholders.

Process for recognition of conflict

We believe the proposed interim process for recognition of conflicts relies too heavily on interpretation by individual companies.

The absence of an agreed list of countries that are conflict-affected or at high risk of conflict is a key challenge for the effective implementation of the standard. Basing the conflict recognition process, as proposed, on the reports of reputable third parties such as international bodies and well-established non-government conflict indices creates an objective basis for assessment. However, asking individual companies to make the conflict recognition assessment themselves, even on the basis of reliable third-party information, could pose problems. Not only would it be difficult politically for individual companies to take responsibility for declaring a country in which they are working as a conflict region, but it could also lead to inconsistency between companies in recognizing conflict in specific countries. The WGC as a whole could play a role in recognizing conflicts during the interim period, perhaps by devising a standard framework for collating the third party reference sources described in the Conflict-Free Gold Standard to produce uniform country-level determinations.

In the longer term, the WGC proposes establishing a multi-stakeholder process to determine and maintain a list of countries in or at risk of conflict. Such a list would have application for companies across all sectors, not only for gold mining companies. The WGC could consider reaching out to groups and coalitions in other sectors of industry to support this activity.

Use of globally-appropriate language to describe conflict parties

The language used to describe conflict parties in the standards should be revised to ensure that it is appropriate for the global context as well as the DRC and African contexts.

As noted earlier, we welcome the WGC's decision to take a global perspective on the issue of conflict, rather than focusing solely on the DRC or African context. However, at various points in the standards, references are made to interactions with "government or militia". While these types of armed group are most relevant for analysis of conflict in the DRC region, in other regions organized crime or terrorist groups may be present. With this in mind, we suggest that any general references to "government and militia" should be replaced with a formulation such as "conflict parties". This would better reflect the definition of conflict used at the start of the standards, which identifies possible conflict parties as including "government, militia, organized criminals or terrorist groups".

Clarifying requirements relating to financial transparency

Given the requirement in Section 5 the Conflict-Free Gold Standard for disclosure of payments to governments and related parties, and the reference to the Extractive Industry Transparency Initiative (EITI), we would encourage the WGC to consider integrating corporate support for EITI as a requirement within the standards. We note that the G8 members recently called on all extractive industry companies to publicly disclose their payments to host governments, and to become EITI supporters⁴. A number of WGC members are voluntarily disclosing payments information, and have already committed to support EITI⁵.

Although failure to disclose payments is rightly considered as an instance of non-conformance, Section 5 does not appear to address the question of whether specific types of disclosed payments to government or other conflict parties, or payments made under specific circumstances, will have implications for conflict-free status. This issue should be clarified.

Integrating emerging issues, standards and principles

The drafts should be reviewed to ensure that they are in alignment with the *Guiding Principles for Business and Human Rights*⁶, endorsed recently by the United Nations Human Rights Council. We would also encourage the WGC to review other conflict-related initiatives under development for possible integration into the present draft standards, or for consideration in its future standards work.

- The WGC should explore the challenges and opportunities relating to gold production from artisanal and small scale mining (ASM). ASM is an important source of livelihoods in developing countries, but it can also contribute to conflict, corruption and poverty, and at the refining stage may present the biggest challenge for the Chain of Custody Standard.
- We recognize that the present drafts focus on conflict in relation to armed groups and the most severe human rights abuses. However, company operations are also exposed to risk from conflict with local communities, or between factions within local communities. These aspects of conflict were recognized in the recent multi-stakeholder consultations on responsible business in conflict-affected and high-risk areas⁷, which highlighted the importance of local stakeholder engagement and strategic social investment as aspects of risk mitigation. We also suggest that the WGC should explore the challenges and opportunities associated with the emerging principle of free, prior and informed consent of indigenous peoples.

⁴ G8. Deauville Declaration. [Online] 2011. <http://canadainternational.gc.ca/g8/summit-sommet/2011/g8deauvilledeclaration2011-05-27.aspx>

⁵ According to the EITI website, EITI supporting companies include WGC members AngloGold Ashanti, Barrick Gold, Goldcorp, Gold Fields, Kinross and Newmont. <http://eiti.org/supporters/companies>.

⁶ United Nations. Guiding Principles for Business and Human Rights. [Online] 2011. <http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf>

⁷ UN Global Compact/Principles for Responsible Investment. Guidance on Responsible Business in Conflict-Affected and High-Risk Areas. [Online] 2010. http://www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/Guidance_RB.pdf



- Finally, we note that downstream gold users such as the Responsible Jewellery Council are developing standards that embrace a range of responsibility issues, incorporating both social and environmental concerns.

Conclusion

In conclusion, we once again commend the WGC for undertaking the conflict-free gold standards initiative, and for opening the standards to public comment. In general, we see value in the proposed standards as a means to address the issue of linkages between minerals production and armed conflict and increase transparency in the gold supply chain. We believe the standards could be enhanced by consideration of the following areas:

- Clarifying expectations of WGC members.
- Completing the assessment even if non-conformance is identified.
- Public disclosure of assessment results.
- Process for recognition of conflict.
- Use of globally-appropriate language to describe conflict parties.
- Clarifying requirements relating to financial transparency.
- Integrating emerging issues, standards and principles.

If you have any questions regarding this letter, please contact Michelle de Cordova, Manager, Public Policy & Research, NEI Investments (mdecordova@NEIinvestments.com 604-742-8319).

Sincerely,

NEI Investments

A handwritten signature in black ink, appearing to read "Robert Walker", followed by a horizontal line.

Robert Walker
Vice President, ESG Services & Ethical Funds

CC: Board of Directors, NEI Investments