

**Advisory Committee on Investment Responsibility (ACIR)
Duke University**

Report on Conflict Minerals

May 1, 2012

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1. Summary and recommendations

This report offers advice on a request that Duke University seek transparency and reforms from companies in which the University invests where those companies use “conflict minerals.” This report was prepared by the Advisory Committee on Investment Responsibility (ACIR), whose members in 2011-12 included: administrators Ralph McCaughan, Tori Nevois, Scott Gibson, and Tracy Futhey; faculty Philip Morgan, Wayne Norman, and Jonathan Wiener (chair); students Peter Schork and Steven Achatz; and alumna Laura Meyer Wellman; with staff support from Michele Wittman. (The full 2012 ACIR member roster is attached as Appendix E.)

Over the past decade, the Duke University community’s engagement in issues of socially responsible investing, purchasing, and service has grown. In the late 1990s, Duke students were at the forefront of a national movement to ensure that the branded apparel sold in university stores did not come from sweatshops. In 2004, Duke’s Board of Trustees adopted a Guideline on Socially Responsible Investing, and created a process for deliberation on requests “to take ethical factors into account when setting investment policies” (the details of this process and its criteria are set forth in section 2 of this report, below). In 2007, Duke students submitted the first such request, asking the University to refrain from investing in companies doing significant business in Sudan/Darfur – a request that the ACIR recommended to the President, the President recommended to the Board of Trustees, and the Board of Trustees adopted in January 2008. Duke students’ culture of active involvement in the world has been broadened and deepened through Freshman Focus clusters that explore global justice and global health issues, and more recently through hands-on opportunities to address these issues in signature programs such as DukeEngage and DukeImmerse. We are now seeing a new generation of students who have been shaped by these programs and who are taking the initiative to learn about and mobilize attention around global issues they find particularly urgent. In its strategic plans and in daily discourse, the Duke University community exhibits a growing commitment to the quest for “knowledge in the service of society.”

In January 2012, Duke students submitted a request for investment measures regarding “conflict minerals.” This request asked the University to (i) cast its proxy votes in favor of “well-written and reasonable shareholder resolutions that ... ask companies for reports on their policies and efforts regarding their avoidance of conflict minerals and conflict mineral derivatives,” and (ii) encourage companies to comply with the reporting requirements on “conflict minerals” enacted in section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.¹ This request was referred by the President’s Special Committee (PSC) to the Advisory Committee on Investment

¹ As used here, “conflict minerals” are a set of ores containing metals – notably tantalum, tin, tungsten, and gold – mined and transported amidst the violence in the eastern Democratic Republic of the Congo (DRC) and adjoining countries (such as Rwanda, Burundi and Uganda). The students’ request to the PSC on “conflict minerals and [their] derivatives” (January 2012) mentioned these four metals, but did not provide a complete definition of the term “conflict minerals.” In section 1502 of the Dodd-Frank Act, the U.S. Congress defined the term “conflict minerals” from the DRC and adjoining countries as: (A) columbite-tantalite, also known as coltan (the metal ore from which tantalum is extracted); cassiterite (the metal ore from which tin is extracted); gold; wolframite (the metal ore from which tungsten is extracted); or their derivatives; or (B) any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the DRC countries. See section 1502(e)(4) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203 (July 21, 2010), adding section 13(p) to the Securities Exchange Act of 1934, 15 U.S.C. 78m(p).

Responsibility (ACIR). (The specific details of this request, and a later modification of the second part, are set forth in section 3 of this report, below.)

Dodd-Frank Act section 1502 requires companies to report on whether or not the metals used in their products are “DRC conflict free,” but implementation of this Dodd-Frank provision awaits a pending rulemaking by the Securities and Exchange Commission (SEC).² International organizations such as the United Nations Group of Experts on the Democratic Republic of the Congo³ and the Organization for Economic Cooperation and Development (OECD) have also launched due diligence and tracking programs. The consumer electronics industry has been the most visible target of activists concerned about the use of conflict minerals (since all four of the metals are used in products like mobile phones and laptop computers), although some of these metals are widely used in other industries as well. Major electronics companies – including Apple, Intel, HP, and many others – have formed a global trade association called the Electronics Industry Citizenship Coalition (EICC) that is collaborating specifically to solve the problem of tracing conflict minerals within global supply chains.⁴ In late 2011, the Public-Private Alliance (PPA) for Responsible Mineral Trade was launched by the U.S. State Department, in collaboration with the US Institute of Peace, 20 international high-technology and automotive companies, four industry associations, six non-governmental organizations, and the International Conference of the Great Lakes Region.⁵ The PPA is developing pilot programs to demonstrate tracing and validation methods to distinguish conflict and non-conflict minerals in the supply chain.

Meanwhile, so far as we are aware, the only other university to have adopted an investment policy on conflict minerals to date is Stanford, which in June 2010 adopted essentially the same proxy voting provision now requested by the Duke students. (A copy is included here as Appendix L).

Findings:

As detailed further below, the ACIR gathered extensive information, engaged in substantive discourse, and heard broad expressions of concern from the Duke University community. Under the 2004 Guideline on Socially Responsible Investing, the key criteria for action include findings of “substantial social injury” and that action would “have a direct and material effect in alleviating” such injury.

The ACIR finds that the conflict in the DRC and adjoining countries has been extraordinarily violent and horrific, and that trade in conflict minerals contributes to “substantial social injury” – while

² US Securities and Exchange Commission (SEC), Proposed Rule: Conflict Minerals, Dec. 15, 2010, at <http://www.sec.gov/rules/proposed/2010/34-63547.pdf>. The Dodd-Frank law set a deadline of April 2011 for the SEC to issue its final rule, but the SEC has encountered difficulties in determining which companies would be covered by the reporting requirements and how quickly to phase in these requirements, and has still not issued the final rule a year later. See Edward Wyatt, “Behind the Blood Money: Use of ‘Conflict Minerals’ Gets More Scrutiny From U.S.,” NY Times, March 20, 2012, p.B1, at <http://www.nytimes.com/2012/03/20/business/use-of-conflict-minerals-gets-more-scrutiny.html>.

³ UN Group of Experts on the Democratic Republic of the Congo, Final Report S/2011/738 (published by the UN Security Council, December 2, 2011), available at <http://www.un.org/sc/committees/1533/egroup.shtml>.

⁴ See <http://www.eicc.info/>.

⁵ See http://blogs.state.gov/index.php/site/entry/joining_together_to_combat_conflict_minerals/ (posted Nov. 15, 2011).

recognizing that the conflict in the DRC region is complex; it involves neighboring countries and their governments; the trade in minerals is not the only financing source sustaining the conflict; the industries using such minerals are taking steps to identify and avoid sources that help finance the conflict; and the use of such minerals is not limited to electronics (such as computers and cellphones) but also includes machinery, automobiles, jewelry, food containers, and other widely used products. (These findings are set forth in further detail in section 5 of this report, below.)

The ACIR also finds that the requested proxy voting guideline could “have a direct and material effect in alleviating” the “substantial social injury.” Support for proxy voting measures calling for reporting and due diligence seems likely to encourage companies to ensure that their supply chains are free of conflict minerals. But, that said, the ACIR finds that the full consequences of action by companies to avoid conflict minerals are complex and uncertain. In the short term, if it remains difficult to distinguish conflict minerals from non-conflict minerals in the long supply chain (from mines to transport to smelters to manufacturing), the consequences of seeking reporting and avoidance of conflict minerals may include inducing companies to avoid all minerals from the DRC region (irrespective of the actual involvement of specific mines or trade in the conflict), thereby unintentionally exacerbating unemployment and poverty among an already destitute population. At the same time, Dodd-Frank Act section 1502 (once it is implemented by the SEC), and related due diligence programs of international organizations and industry groups, are likely to have a much larger impact than a university’s (or many universities’) proxy voting guidelines. Still, the university’s policy may have some impact in the interim before the SEC’s final rule becomes effective. And a university may serve its educational function by increasing awareness of an egregious problem, and moreover by increasing understanding of a complex problem and of the full consequences of alternative response measures. In light of this complexity and the potential for unintended consequences, the ACIR sees a need for continuing evaluation of the full consequences of response measures. The ACIR also finds the students’ requests to be moderate in their call for reporting and engagement rather than for divestment, and in their call for support of “well-written and reasonable” shareholder resolutions, thereby giving DUMAC flexibility in the exercise of the proxy voting guideline. (These findings on the complexities of assessing whether Duke’s actions could “alleviate” the social injury, including potential unintended consequences, are discussed in more detail in section 5.D of this report, below.)

Recommendations:

- A. The ACIR recommends to the President that the Board of Trustees of Duke University adopt the requested “proxy voting guideline,”⁶ in particular that Duke should vote in favor of “well-written and reasonable shareholder resolutions that ask companies for reports on their policies and efforts regarding their avoidance of conflict minerals and conflict mineral derivatives.”
- B. Consistent with the University’s educational and research mission, the ACIR also recommends to the President that Duke University engage with companies in which Duke directly invests that report continued use of conflict minerals without steps to mitigate harm, or

⁶ The phrase “proxy voting guideline” is used in the students’ request to the PSC, quoted in section 3 below. It refers to a guideline for Duke’s fund managers on how to cast Duke’s proxy votes on shareholder resolutions. As discussed in section 4 below, it would be applicable to those investments in which Duke has “direct” ownership holdings and not to “commingled” funds.

if those companies in which Duke directly invests are prosecuted for violating Dodd-Frank section 1502. This engagement is intended to foster a continuing process of learning, awareness and understanding; it offers an avenue for the Duke community to learn more about the full consequences of measures to avoid conflict minerals. To keep this process manageable, the ACIR recommends that the initiation of engagement be based on receiving reports about a company or impacts in the DRC region (rather than obliging Duke University or DUMAC to monitor all companies continuously); and that the timing, form and content of engagement remain in the discretion of the President.⁷ It could also be implemented with various activities, outside the area of investment policy, such as events, lectures, workshops, courses, student study groups, and dialogue – on campus, with relevant public and private groups, and with alumni. For example, such engagement could communicate Duke’s concern about a company’s violation of Dodd-Frank; or could ask whether and why companies continue to use minerals from the DRC region or from specific sources implicated in the conflict, whether conflict-free certification systems are available to distinguish among minerals within the region, and what the full array of consequences may be of seeking to avoid conflict minerals.

C. The ACIR further recommends that the President ask the PSC to review these measures 5 years from their adoption, to revisit them as their full consequences and evolving circumstances become better understood. (Of course, the President and/or the Board of Trustees may revisit and amend these measures at any time as they see fit; the ACIR is simply recommending that some review be built into the process from the outset.)

The first recommendation on a proxy voting guideline would be the same guideline adopted by Stanford University, and similar in intent to the more detailed reporting requirements in the Dodd-Frank Act section 1502 and pending SEC rule.

Duke University would then go further, through Duke’s second and third recommendations for engagement and continuing assessment (over time and in 5 years), by seeking to understand and evaluate the activities of companies and the actual consequences of reporting on conflict minerals (including the benefits and risks for the population in the DRC region), with a view to updating Duke’s policies as this understanding improves. Duke would thereby recognize that such policies are not one-time interventions, but are continuing exercises of learning and adaptive management as circumstances evolve in a complex world.

At its meeting on April 26, 2012, the ACIR members in attendance voted 8-0 in favor of these recommendations. Two members were unable to attend.

⁷ The students’ original request to the PSC in January 2012 asked for a prohibition on future investment in companies that violate the Dodd-Frank Act section 1502. Later, in April 2012, the students submitted to the ACIR a revised request replacing the future investment prohibition with a modified request that the President of Duke University engage such companies by sending a letter expressing concern. The ACIR now recommends engagement, as part of a process to learn and improve understanding of these complex issues and policy impacts, but leaving to the President the timing, form and content of such engagement.

2. Role of the ACIR

In its “Guideline on Socially Responsible Investing,” adopted in August 2004, Duke University’s Board of Trustees established a commitment to invest its assets both to maximize the financial returns that support the educational mission of the University, and also to “fulfill its educational and humanitarian purposes” as “a responsible and ethical investor” by managing its investments to avoid causing “substantial social injury” such as “deprivation of health, safety, or civil, political, and human rights.”

In order to implement this commitment, in November 2004 the Board of Trustees created a process for careful deliberation on such questions through two committees: the President’s Special Committee on Investment Responsibility (PSC), and the Advisory Committee on Investment Responsibility (ACIR). Under this procedure, if the PSC finds that a request from members of the Duke University community raises a “credible allegation of social injury” and “merits further investigation,” the PSC refers the request to the President and the ACIR. The ACIR then undertakes further inquiry to provide advice and a recommendation to the President.

Under the November 2004 procedure creating and governing the PSC and ACIR, the ACIR may “take as an agenda item only matters referred by the President or the PSC.” The ACIR may conduct its own research; “may ask individuals, from within the University or outside of it, to attend its meetings as consultants or otherwise provide advice and information”; and may “sponsor or encourage the convening of occasional public meetings or forums of the Duke community to assess the views of members of the community.”

The ACIR’s role is advisory to the President. According to the November 2004 rules, the President “will review the analysis and recommendation of the ACIR and, if he or she concurs, will forward a recommendation to the Board of Trustees.”

The Board of Trustees then decides what action to take. Under the August 2004 Guideline, when “the University community has engaged in substantive discourse on an issue and expressed broad concern that substantial social injury is being caused by such policies or practices, the president may make a recommendation to the Board of Trustees.” (The PSC/ACIR process created in November 2004 provides the mechanism for such substantive discourse and expressions of concern.) And when “the Board of Trustees finds ... substantial social injury, and that a desired change ... would have a direct and material effect in alleviating such injury, it may instruct the Duke University Management Company (DUMAC) to take appropriate action” regarding Duke’s investments. These four criteria – (a) substantive discourse, (b) broad expression of concern, (c) substantial social injury, and (d) efficacy in alleviating such injury – are the key predicates in the Guideline for action by the Board of Trustees.

3. The request for action and ACIR proceedings on “Conflict Minerals”

In January 2012, undergraduates “Stefani Jones, Sanjay Kishore, and the Coalition for a Conflict-Free Duke,” submitted a request to the PSC. The students’ request set forth evidence to satisfy the four criteria noted above, and asked the Board of Trustees to adopt the following:

“a) *Proxy Voting Guideline* – The University will vote in favor of well-written and reasonable shareholder resolutions that

1. Ask companies for reports on their policies and efforts regarding their avoidance of conflict minerals and conflict mineral derivatives.
2. Ask companies to comply with the requirements of due diligence described in Section 13(p) of the Securities and Exchange Act of 1934, which was amended [by section 1502 of] the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

“b) *Future Investment Guideline* – The University precludes any new, future investments in companies required to disclose information about conflict minerals that have: filed an “unreliable determination,” filed false information, or failed to file a report – all as required by section 13 of the Securities and Exchange Act of 1934.” [This item (b) was later replaced by the students on April 4 with a revised request for a “Corporate Engagement Guideline,” as described below.]

In late January 2012, the PSC, chaired by Provost Peter Lange, sent a memorandum referring the “conflict minerals” matter to the ACIR, stating in part:

“[The PSC] voted unanimously to request that the ACIR examine the request ... [T]he PSC concluded that the issue of conflict minerals and their use in commerce plausibly does cause substantial social injury and that changes in the activities of companies with respect to the usage of conflict minerals could have a direct and material effect in alleviating such injury. In addition, the petitioners demonstrated that there had been sufficient interest and concern among members of the Duke community with regard to the matter of conflict minerals to warrant consideration of this matter by ACIR.

“In forwarding this matter to ACIR, the PSC wishes to note that it is supportive of consideration of actions stipulated under section (a) 1 of the petitioners’ request ... regarding the exercise of proxy votes and that it assumes that if the soon to be forthcoming regulations under Dodd-Frank require actions by companies in which Duke has investments with regard to conflict minerals, that the companies will comply with those regulations. The petitioners did not request any action with regard to divestiture nor is the PSC ... prepared to ask the ACIR to consider such actions.”

The President then asked the ACIR to investigate this issue further. The ACIR membership roster for 2012 is attached as an Appendix. The ACIR held an initial organizing meeting on February 27, and further meetings on April 4, April 11, and April 26. During this phase of inquiry the ACIR and its individual members also gathered information available in the public domain, in order to better understand the issues, and the state of public debate globally, nationally, and within the Duke community.

On April 4, 2012, the ACIR held two sets of meetings: in the morning, an internal fact-finding meeting with invited experts; and in the evening, an open forum to which all members of the Duke University community were invited. During the morning internal fact-finding meeting, from 9:00 am to 1:00 pm, the ACIR heard from the following experts:

- David Shumate, Executive Vice President, DUMAC
- Stefani Jones '14 and Sanjay Kishore '13, Coalition for a Conflict-Free Duke
- Linda Kimball, Manager of Investment Responsibility, Stanford University
- Bill Frederick B'87 and Jacky Haynes B'86, Apple, Inc.
- Stephen Smith, Dept. of African & African American Studies, Duke University
- James Cox, Brainerd Currie Professor of Law, Duke University

The ACIR's findings from these experts are discussed below.

During the presentation by Stefani Jones and Sanjay Kishore on April 4, the students submitted to the ACIR a revised request for a "Corporate Engagement Guideline," to replace their earlier request item (b) for a "Future Investment Guideline." This "Corporate Engagement Guideline" requests that:

the President of Duke University send "a letter of engagement [notifying a company in which Duke holds shares of possible further shareholder action by Duke] ... to any company after becoming aware [that] (1) the company reports that it is sourcing conflict minerals that facilitate violence in Eastern Congo in its filing under Section 1502 of the Dodd-Frank Act with the SEC, and has not credibly demonstrated that it is taking substantial measures towards remedying the harm; or (2) the company becomes subject to SEC prosecution for materially violating due diligence reporting rules as defined under Section 1502 of the Dodd-Frank Act."

The students pointed out that this revised request for a "Corporate Engagement Guideline" does not request divestment, nor a ban on future investments, nor that companies leave the DRC region. Rather, they said, it requests that Duke communicate with companies to signal that there is demand from shareholders for the companies to improve their activities in the DRC region.

In the evening of April 4, the ACIR held an open forum from 6:00 – 7:30 pm, in room Von Canon A of the Bryan Center. The ACIR widely advertised the open forum in advance, and created a website for the event, <http://spotlight.duke.edu/acirforum/>, on which it posted the 2004 Guideline on Socially Responsible Investing, the 2004 rules for the PSC and ACIR, the 2008 Board of Trustees resolution on Sudan/Darfur, the 2012 students' request to the PSC on conflict minerals, the 2012 PSC memo to the ACIR, and the list of current ACIR members. More than 100 people attended the open forum, as well as almost all the members of the ACIR.

At the open forum, ACIR members were impressed by the expression of deep concern by all who spoke, including both informative and emotionally moving details of the agonizing human and ecological toll of the conflict in the DRC region. These findings are discussed further below.

4. Duke's Investments

Duke University's investments are managed by DUMAC, Inc. At the ACIR's internal fact finding meeting on April 4, DUMAC Executive Vice President David Shumate briefed the committee. DUMAC is a separate legal entity controlled by Duke University: DUMAC has its own separate board of directors (appointed by the Duke University Board of Trustees), which reports to the Executive Committee of Duke University's Board of Trustees, and DUMAC's President reports to Duke University's President in addition to reporting to the DUMAC Board. David Shumate described the relationship as "Duke sets objectives and parameters, DUMAC executes."

In general, DUMAC invests Duke's assets to maximize the financial return on these investments, in order to support the educational mission of the University. The 2004 Guideline on Socially Responsible Investing recognizes this primary objective, while adding that the Board of Trustees may in special situations direct DUMAC to include issues of social responsibility in its investment activities. On March 30, 2012, the Executive Committee of the Board of Trustees of Duke University adopted a "Proxy Policy," which directs DUMAC to instruct its fund managers, as one of its "General principles," to "exercise proxy voting rights in a manner calculated to maximize shareholder value." At the end of this Proxy Policy, in a final section on "Proposals related to social issues," the fund managers are instructed to "cast votes in the economic best interests of Duke University, unless otherwise directed by DUMAC."

The ACIR was advised by David Shumate that DUMAC's (and hence Duke's) ability to guide proxy voting is confined to those investments in which Duke holds "direct" ownership. Most of Duke's investments are delegated by DUMAC to many different managers of "commingled" funds, meaning funds that have multiple investors; each investor owns just a fraction of the fund; and the fund owns a large portfolio of many companies. Moreover, in "commingled" funds, the shares held in particular companies may change frequently, even daily. Some of Duke's assets are in its employee retirement plan, subject to the federal ERISA law and not subject to Duke's proxy voting guidelines. Even in the "direct" holdings, DUMAC typically hires external managers to invest these funds, and holds its assets in a variety of types of securities which may change frequently. Thus, any proxy voting guideline adopted by the Board of Trustees, and any policy of Duke engagement with companies in which Duke invests, would only be applicable to the "direct" holdings (i.e. "separate account equities," and a smaller set of funds managed in-house by DUMAC).

David Shumate advised the ACIR that under current institutional arrangements, DUMAC is able to administer a small number of investment guidelines, but that a growing number of guidelines (or guidelines written in mandatory terms rather than guidelines giving DUMAC and its fund managers discretion to exercise judgment) would become costly to administer. Among other costs, it may be more difficult for DUMAC to secure the services of the best fund managers earning the highest returns if Duke's business involves having to adhere to a large number of special requests. Duke University has currently adopted one investment guideline on social issues – the Board of Trustees' January 2008 resolution on avoiding investments in Sudan/Darfur. If adopted, a guideline on conflict minerals in the DRC region would be the second.

The only other university of which we are aware to have adopted an investment guideline on conflict minerals in the DRC region is Stanford University (June 2010). Stanford has adopted more than 15 proxy voting guidelines on social, environmental, human rights, consumer and labor issues, since it began

doing so in 1972. These guidelines, and Stanford's overall policies on investment responsibility, are available on its website, <http://apir.stanford.edu/>.

At its internal fact finding meeting on April 4, the ACIR was briefed by Linda Kimball, Manager of Investment Responsibility for Stanford University. She reported that Stanford has constructed an institutional infrastructure to develop and administer these numerous investment guidelines, including her own position and several other staff. As David Shumate pointed out, Duke University does not currently have this institutional capacity.

5. The ACIR's findings

The 2004 Guideline on Socially Responsible Investing set forth four key criteria for action by the Board of Trustees: (a) substantive discourse, (b) broad expression of concern, (c) substantial social injury, and (d) efficacy in alleviating such injury.

A. Substantive discourse.

The ACIR finds that "substantive discourse" on the conflict minerals matter was undertaken in the ACIR's process (notably in its internal fact finding meeting with invited experts, and in its subsequent deliberations), in the PSC's initial review, and in the broader Duke community over the past several months.

B. Broad expression of concern.

The ACIR also finds that there has been a "broad expression of concern" across the Duke community about the conflict minerals issue, as represented in the efforts of the student Coalition for a Conflict-Free Duke since 2011⁸; the resolution adopted in February 2012 by the Duke Student Government (DSG)⁹; the petition signed by hundreds of students between November 16, 2011 and April 4, 2012¹⁰; and the ACIR open forum held on April 4, 2012, at which more than 100 people expressed their deep concerns about the conflict in the DRC region and the role of minerals trade in financing that conflict.

C. Substantial social injury.

The PSC found sufficient evidence of "substantial social injury," and the ACIR agrees. The conflict in the Democratic Republic of the Congo has been horrific. The students' petition to the PSC (January 2012) cites a 2007 estimate by the International Rescue Committee (IRC) of more than 5 million deaths and hundreds of thousands of rapes in the conflict from 1998 to 2007. Subsequent analyses by the IRC and the World Bank indicate that this estimate includes deaths due to disease and malnutrition caused by the conflict as well as deaths from combat, and that the total number of excess deaths due to the conflict may range from 3.1 to 7.6 million, depending on assumptions about the baseline mortality rate

⁸ See its website, <http://conflictfreeduke.org/>.

⁹ See <http://conflictfreeduke.org/2012/02/23/duke-student-government-resolution-on-conflict-free-investments/>.

¹⁰ Maintained at <http://conflictfreeduke.org/petition/>. A printed hard copy of the petition with signatures was submitted by Stefani Jones to the ACIR at the close of the open forum on April 4, 2012.

that would have occurred in the DRC region in that period absent the conflict.¹¹ And there have been multiple wars in this period, including the overthrow of the dictator Mobutu, the clashes involving the retreating Hutu militias from Rwanda, and rivalries within the Congolese army (FARDC); much of these conflicts were not driven by mineral wealth. Whatever the exact number attributable to the conflict, it seems clear that “millions of people died unnecessarily because of the war.”¹²

This conflict since 1998 was preceded by a more than 75% decline in per capita GDP in the country, from \$323 in 1960 to just \$81 in 2001 (after which per capita GDP appears to have leveled off at about \$95).¹³ The combination of economic collapse and bloody conflict has meant that the “overall situation across the Congo, not just in its eastern portion, has been (and continues to be) one of acute, abject misery for most of the population.”¹⁴

The UN Group of Experts observed in late 2011 that an array of armed groups continue to vie for political and military primacy in the region, including both rebel groups and groups supported by governments of the DRC and of adjoining countries.¹⁵ The IRC reported recently that “[d]uring the first three months of 2012 alone, more than 220,000 people had to flee their homes due to attacks and reprisal attacks perpetrated by both foreign rebel groups and local resistance groups active in the province” of South Kivu in the eastern DRC.¹⁶

It is widely observed that armed groups (both rebels and government-backed groups, including rival factions within the Congolese army (FARDC)) finance their activities in part by “taxing” the mining and transport of minerals.¹⁷ Section 1502(a) of the Dodd-Frank Act (enacted in July 2010) states that: “It is the sense of the Congress that the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo is helping to finance conflict characterized by extreme levels of violence in the eastern Democratic Republic of the Congo, particularly sexual- and gender-based violence, and contributing to an emergency humanitarian situation therein...”

At the same time, the conflict in the DRC region is complex. Prof. Stephen Smith explained these complexities to the ACIR at length in his portion of the April 4, 2012 internal fact finding session. The trade in minerals is not the only financing source of the conflict; other economic activities, and funding from the neighboring country governments with conflicting interests, also help finance and sustain the array of armed groups. Apart from the minerals trade, the neighboring governments may be financing the conflict to combat rebel groups (including those that have moved into other countries’ territories) and to achieve gains against rival governments.

¹¹ Tony Gambino, “Democratic Republic of the Congo,” World Development Report 2011: Background Case Study, The World Bank (March 2, 2011), p.33. Gambino notes that, paradoxically, the worse the situation had become in the Congo due to prior wars and displacement, the higher the baseline mortality rate before 1998, and hence the lower the estimated “excess” deaths due to the conflict from 1998 to 2007; thus, lower estimates of excess deaths due to the conflict may only reflect an underlying baseline situation that was even worse.

¹² Gambino 2011, p.33 (quoting and agreeing with the IRC).

¹³ Gambino 2001, p.2 and p.32 (figures are in constant year 2000 dollars).

¹⁴ Gambino 2011, p.34.

¹⁵ UN Group of Experts, Report S/2011/738 (December 2, 2011), pp.3-4.

¹⁶ Sinziana Demian, “IRC steps up aid for Congolese caught in the middle of armed conflicts in South Kivu,” International Rescue Committee, April 23, 2012, at <http://www.rescue.org/news/irc-steps-aid-congolese-caught-middle-armed-conflicts-south-kivu-13571>.

¹⁷ John Prendergast and Sasha Lezhnev, “From Mine to Mobile Phone: The Conflict Minerals Supply Chain,” Enough Project (2009), available at www.enoughproject.org.

The UN Group of Experts reports that the role of minerals in financing the conflict in the DRC region appears to have declined in the past two years:

“The Forces démocratiques de libération du Rwanda (FDLR) remains the most militarily strong and politically significant rebel force in the Kivus ... While in the past, FDLR derived much of its funding from mining, its direct access to and control over certain natural resources have been reduced. Instead, the main sources of financing for FDLR are trade in commercial products in mining areas under its control, and taxation and agricultural sales of products such as palm oil and cannabis.”¹⁸

This trend may indicate the influence of US and international reporting requirements encouraging companies to avoid conflict minerals, but it also may illustrate the ability of armed groups to continue the conflict by shifting to other financing sources (and thus the potentially limited efficacy of avoiding conflict minerals in actually reducing the conflict). The magnitude of this effect depends on how fully and easily other financing sources can substitute for reduced mining revenues.

The UN Group of Experts also observes that due diligence appears to have reduced purchases of conflict minerals in some areas but not others, for some minerals more than others, and for some purchasers but not others, all with complex impacts:

“Since April 2011, most tin, tantalum and tungsten comptoirs in eastern Democratic Republic of the Congo have had no buyers for untagged minerals, with the exception of three — TTT Mining, Huaying Trading and Donson International — which have sold to smelters, refiners and trading companies in China that do not require tags or evidence of due diligence. The Group has evidence that these comptoirs have made purchases that finance armed groups and criminal networks within FARDC. Since Chinese refiners, smelters and trading companies make up a significant proportion of the buyers of tin, tungsten and particularly tantalum from eastern Democratic Republic of the Congo, awareness and implementation of due diligence on the part of such companies are of particular importance. However, the Group was unable to visit China to investigate the due diligence implementation of such refiners and smelters or to discuss with the Government the steps that it is taking to raise awareness and urge implementation of due diligence.

“Few comptoirs in eastern Democratic Republic of the Congo and neighbouring countries are currently implementing due diligence. In non-conflict areas, where comptoirs and other traders have exercised due diligence and introduced traceability systems, mining sector governance has improved, and mineral production and export have risen. In areas where no traceability systems have been introduced, particularly the Kivus and Maniema, mineral production and exports have fallen. This has not only decreased conflict financing, but also weakened mining sector governance, with a greater proportion of trade becoming criminalized and with continued strong involvement by military and/or armed groups.”¹⁹

The extent of due diligence varies by type of mineral:

¹⁸ UN Group of Experts, report S/2011/738 (Dec. 2, 2011), p.3.

¹⁹ UN Group of Experts, report S/2011/738 (Dec. 2, 2011), p.5.

“There is good awareness of the Group’s due diligence guidelines among international refiners and smelters of tin, tantalum and tungsten ores belonging to the International Tin Research Institute, an industry association, while awareness among non-members is weaker. For many Institute members, a more immediate concern is to attain “conflict-free smelter” status. “Conflict-free smelter” audits require refiners and smelters to show evidence of due diligence, and their form has been significantly influenced by the Group’s due diligence guidelines. General awareness of the issue of conflict minerals, and of the need for due diligence to mitigate the risk of funding conflict through mineral purchases, has increased internationally in most affected industries, particularly electronics, vehicle manufacture and aerospace. This is most obvious in the United States of America, which has introduced legislative requirements for due diligence disclosure.

“By contrast, Congolese gold is much in demand. Most of the gold trade in the country goes unrecorded, and most transactions are concluded in neighbouring cities such as Kampala, Bujumbura, Nairobi or Mwanza (United Republic of Tanzania). The Group found substantial discrepancies, of more than three tons, between gold import statistics provided by the authorities of the United Arab Emirates and those exports claimed by the Government of Uganda. The gold trade is among the main sources of financing available to Congolese armed groups and FARDC criminal networks. In addition to selling real gold, criminal networks organize elaborate scams in which counterfeit gold is sold to clients ranging from driving instructors to oil magnates.

“Gold comptoirs in eastern Democratic Republic of the Congo and neighbouring countries have not demonstrated significant awareness of the Group’s due diligence guidelines. Due diligence implementation on the part of gold refiners, smelters and jewellers sourcing artisanally mined gold has also been weak, although gold industry associations are developing guidelines strongly influenced by those of the Group.”²⁰

The implementation of due diligence also varies across countries:

“On 6 September 2011, the Ministry of Mines of the Democratic Republic of the Congo issued a note circulaire obliging all mining operators in the country, at every point of their supply chains, to exercise due diligence as defined in Security Council resolution 1952 (2010) and the guidance provided by the Organization for Economic Cooperation and Development. Other countries in the region have also taken measures to raise awareness of the due diligence guidelines, particularly Burundi and Rwanda, assisted by the International Conference on the Great Lakes Region. It remains unclear, however, how effectively the Rwandan mining authorities have been able to prevent the fraudulent importation of Congolese minerals into Rwandan mines, where they are then tagged as Rwandan.

“On 10 March 2011, the Government of the Democratic Republic of the Congo lifted its suspension of all artisanal mining activity in the provinces of North Kivu, South Kivu and Maniema, which had been in place since 11 September 2010. The Group determined that during the ban, the mining of tin, coltan and wolframite had continued in several areas, often under the control of FARDC or armed groups. The involvement of FARDC units in mining activities sometimes leads to violent conflicts of interest between army units, revealing the persistence of parallel chains of command. Beyond the Kivus, mining activities are much less tainted by armed group or military involvement. Traceability efforts are ongoing in Tanganyika district, North

²⁰ UN Group of Experts, report S/2011/738 (Dec. 2, 2011), pp.5-6.

Katanga, which is free from armed group control. In Maniema, the Group found conflict-free trading of minerals in the territories of Kailo and Pinga.”²¹

But due diligence can be evaded:

“Smuggling is a widespread problem. Minerals can pass unrecorded through official crossings, but most smugglers use illegal border crossings. The Group identified a number of such crossings, including a street controlled by General Bosco Ntaganda in Goma and a small Lake Kivu port north of Bukavu run by elements of the FARDC navy. Smugglers sometimes try to launder untagged material into the International Tin Research Institute Tin Supply Chain Initiative in Rwanda, threatening the credibility of the system.

“Armed groups continue to generate income from natural resources other than minerals. Among other things, the Group investigated instances of illegal taxation on fishing, timber and charcoal production.”²²

In addition to the UN Group’s due diligence program and the pending Dodd-Frank regulation, the industries using such minerals are taking their own steps to identify, trace, and avoid sources that help finance the conflict, through programs such as the Electronics Industry Citizenship Coalition (EICC) and the US State Department’s Public-Private Alliance (PPA) for Responsible Minerals Trade.²³

The use of minerals from the DRC region is not limited to electronics (such as computers and cellphones); depending on the specific metal, it also includes machinery, automobiles, jet engines, jewelry, food containers, and other widely used products.²⁴ As a result, proxy voting on shareholder resolutions regarding conflict minerals could turn out to arise in numerous companies in a variety of sectors. This question of which companies are covered by a conflict minerals policy has also been a primary reason for the SEC’s delay in issuing its final rule under Dodd-Frank section 1502.²⁵

D. Alleviating the social injury.

It is difficult for the ACIR to say whether the requested investment guidelines would meet the 2004 Guideline’s criterion of promising a “direct and material effect of alleviating” the social injury. The answer may be yes, but this is a complex case, with pros and cons surrounding the uncertain full consequences of each response measure. The fact that the conflict in the DRC region is utterly tragic does not by itself identify how best to respond. Seeing great harm does not by itself reveal the best remedy. For example, knowing that cancer is a terrible disease does not by itself indicate which therapy would be best; different treatments may be more or less effective, and may pose more or less serious side effects, than others. More generally, an intervention to reduce one risk may do so but also turn out to induce other risks; policy needs to be designed to confront and overcome such risk-risk tradeoffs

²¹ UN Group of Experts, report S/2011/738 (Dec. 2, 2011), p.6.

²² UN Group of Experts, report S/2011/738 (Dec. 2, 2011), p.6.

²³ Amy Westervelt, “Anticipating New SEC Rules, Tech Companies Shift To Conflict-Free Metals,” Forbes.com, October 12, 2011, at <http://www.forbes.com/sites/amywestervelt/2011/10/12/anticipating-new-sec-rules-tech-companies-shift-to-conflict-free-metals/>.

²⁴ BSR, “Conflict Minerals and the Democratic Republic of Congo: Responsible Action in Supply Chains, Government Engagement and Capacity Building” (May 2010), pp.5-9 and p.28, available at www.bsr.org.

²⁵ See Wyatt (2012).

by formulating options that reconcile these dilemmas and, ideally, reduce multiple risks in concert.²⁶ Notably, one reason for the large use of tin as a solder is the earlier phase-out of lead (Pb) for public health reasons; now the use of tin is drawing concern for its role in financing the DRC conflict; measures to avoid tin and other conflict minerals may in turn increase the use of other metals posing other risks.

In the arena of international human rights, there is a large literature critiquing trade sanctions and related efforts to pressure countries to protect their civilian populations, on the grounds that such measures may be ineffective and may end up harming the populations meant to be protected.²⁷ Others argue that “smart” sanctions carefully targeted at the leadership group, rather than burdening the broad civilian population, can be effective at advancing human rights.²⁸ While favoring such “smart” sanctions, these authors observe that ordinary “Trade action, in the form of embargos or export restrictions, is a blunt instrument that affects the target economy as a whole. It tends, therefore, to impose economic pain disproportionately on poor and middle class populations by depriving them of essential goods and services for which they are not economically positioned to secure substitutes. Wealthy elites are typically less affected because they have the economic resources and international contacts to secure substitute goods or to circumvent the restrictions via black or gray markets.”²⁹

The requested proxy voting guideline could encourage companies to help alleviate the social injury of the conflict in the DRC region by shifting over time to conflict-free sources and certification systems, thereby reducing the flow of financing to the armed groups from minerals trade. This may even be the most likely result. But the full consequences of such measures are uncertain. In the short term, it may be difficult for companies to trace and distinguish conflict minerals from non-conflict minerals in the long supply chain (from mines to transport to smelters to manufacturing). The representatives from Apple who spoke with the ACIR in its internal fact finding meeting on April 4 noted that technology companies purchase metals from smelters (often in East Asia and Southeast Asia), and the smelters have already combined ore from multiple sources, making it difficult – absent certification by smelters on the sourcing of their raw minerals – to sort out which minerals were implicated in the DRC conflict and which were not. Companies faced with reporting on conflict minerals may simply avoid any minerals from the entire DRC region altogether (including the DRC and adjoining countries such as Rwanda, Burundi, and Uganda). One industry representative referred to this as a geographic “embargo” – similar to the blunt trade sanctions that are critiqued for harming civilian populations. Stanford University’s statement on its proxy voting guideline on conflict minerals recognizes this potential problem (see copy as Appendix L). The UN Group of Experts found in late 2011 that “[a]lthough the [Dodd-Frank] Act does not prohibit or prescribe sanctions for companies that disclose to the Securities and Exchange Commission that their products are not ‘DRC conflict free’, it has become clear that companies are doing

²⁶ See John D. Graham & Jonathan B. Wiener, eds., *Risk vs. Risk* (Harvard University Press, 1995).

²⁷ E.g., Richard N. Haass, “Sanctioning Madness,” *Foreign Affairs* (November/December 1997) (critiquing trade sanctions as a potentially counterproductive tool to promote human rights); Thomas G. Weiss, “Sanctions as a Foreign Policy Tool: Weighing Humanitarian Impulses,” *Journal of Peace Research* 36: 499-509 (September 1999) (trade sanctions may harm civilian populations meant to be helped); Dursun Peksen, “Better or Worse? The Effect of Economic Sanctions on Human Rights,” *Journal of Peace Research* 46: 59-77 (January 2009) (empirical study finding that trade sanctions are associated with increased human rights violations by target governments); Timothy M. Peterson & A. Cooper Drury, “Sanctioning Violence: The Effect of Third-Party Economic Coercion on Militarized Conflict,” *Journal of Conflict Resolution* 55: 580-605 (August 2011) (empirical study finding that trade sanctions are associated with subsequent military intervention).

²⁸ Ella Shagabudinova & Jeffrey Berejikian, “Deploying Sanctions while Protecting Human Rights: Are Humanitarian ‘Smart’ Sanctions Effective?” *Journal of Human Rights* 6:59-74 (2007).

²⁹ Shagabudinova & Berejikian (2007), p.62.

their utmost to ensure that they do not have to make such disclosure. This has led many companies to refuse any gold, tin, tantalum or tungsten that might originate from the Democratic Republic of the Congo or neighbouring countries.”³⁰ Millions of poor workers depend on the mining industry in the DRC.³¹ One commenter argues that “in the absence of customers, mines are shutting down and workers are losing their jobs, adding fuel to the conflict and making the ‘solution’ a part of the problem.”³²

Other ancillary effects might include impacts on ecosystems (such as forest habitat for great apes – gorillas, chimpanzees and bonobos). This topic was raised at the open forum on April 4 by Duke faculty Brian Hare and Vanessa Woods, who research bonobos in the DRC.³³ For example, reducing the ability of militant groups to tax the minerals trade might help protect forest ecosystems in the Congo, by reducing the flow of refugees from the conflict who would have intruded into the forests, and by increasing the capacity of governments to guard the forests. On the other hand, a blanket avoidance of minerals from the DRC region might induce greater unemployment, migration, malnutrition, and hence faster conversion of forest habitat to agriculture.³⁴ Meanwhile, increasing the costs of cellphones might itself have an adverse impact on the poor populations of Africa who increasingly use cellphones for commerce and health.³⁵

In order to overcome these tradeoffs posed by a blanket avoidance of all minerals from the DRC region, the electronics industry (EICC) and the PPA are developing pilot programs to trace and distinguish individual mines and transport routes. Some tagging of tantalum, tin and tungsten is beginning to be practiced in the DRC region,³⁶ and some tantalite smelters are now being certified “DRC conflict free” by the EICC.³⁷ But in the meantime, and for minerals that are more difficult to trace, the consequences of seeking reporting and avoidance of conflict minerals may include inducing companies to avoid all minerals from the DRC region (irrespective of the actual involvement of specific mines or trade in the

³⁰ UN Group of Experts, Report S/2011/738 (Dec. 2, 2011), para. 395, pp.104-05 (adding that “Members of the Electronics Industry Citizenship Coalition, however, have been prepared to purchase materials tagged under the Tin Supply Chain Initiative.”).

³¹ BSR (2010), p.12.

³² Westervelt (2011).

³³ See Vanessa Woods, *Bonobo Handshake* (New York: Gotham Books, 2010).

³⁴ The net effects of avoidance of conflict minerals on the ecosystems and national parks of the DRC region are difficult to forecast. Studies find multiple causes of past human impacts on wildlife habitats in the DRC region, including refugee movements and institutional disarray due to the civil war; influxes of mining workers seeking minerals; and unemployment and starvation due to economic collapse. The impacts also differ among the several national parks located in different regions of the DRC and with different wildlife, minerals, and accessibility. For detail, see Juichi Yamagiwa et al., “Long-Term Research on Grauer’s Gorillas in Kahuzi-Biega National Park, DRC: Life History, Foraging Strategies, and Ecological Differentiation from Sympatric Chimpanzees,” ch. 17 in Peter M. Kappeler and David P. Watts, eds., *Long-Term Field Studies of Primates* (Berlin: Springer-Verlag, 2012); Chris Sandbrook and Dilys Roe, “Linking Conservation and Poverty Alleviation: the Case of the Great Apes,” Arcus Foundation, *Poverty and Conservation Learning Group* (2010); John A. Hart et al., “Human Hunting and Its Impact on Bonobos in the Salonga National Park, Democratic Republic of Congo,” in Takeshi Furuichi and Jo Thompson, eds., *The Bonobos: Behavior, Ecology, and Conservation* (New York: Springer, 2008); Dirk Draulans and Ellen Van Krunkelsven, “The impact of war on forest areas in the Democratic Republic of Congo,” *Oryx* 36: 35-40 (2002); Gretchen Vogel, “Conflict in Congo Threatens Bonobos and Rare Gorillas,” *Science* 287: 2386-2387 (Mar. 31, 2000).

³⁵ The IRC itself has noticed the health benefits of low-cost cellphones in Africa. See Sinziana Demian, “Using cell phones to track a community’s health in Congo,” International Rescue Committee, March 13, 2012, at <http://www.rescue.org/blog/using-cell-phones-track-communitys-health-congo> .

³⁶ UN Group of Experts, report S/2011/738 (Dec. 2, 2011), para. 368, p.99.

³⁷ UN Group of Experts, report S/2011/738 (Dec. 2, 2011), para. 349, pp.94-95.

conflict), as described above, thereby unintentionally exacerbating unemployment and poverty among the already destitute population that the policy is meant to help.

The UN Group of Experts reported some of these effects since the enactment of Dodd-Frank section 1502 and the EICC's policy of seeking to certify some smelters as "DRC conflict-free" beginning April 1, 2011:

Because smelters and refiners seeking conflict-free smelter status have not, since 1 April 2011, bought material that they would have previously purchased, this has led to declining exports and production of tin, tantalum and tungsten ores from Maniema and North and South Kivu. The production and export of these minerals from Katanga and Rwanda, where minerals are being tagged, are rising, however. The fall in production in the Kivus and Maniema has led to rising unemployment and worsened poverty among the tens of thousands of people who depend on artisanal mining, with a consequent sharply negative impact for the economies of the affected regions as a whole. The fall in production has also had a severely negative impact on provincial and national governmental revenues.³⁸

The Dodd-Frank Act section 1502 (once it is implemented by the SEC), and related due diligence programs of trade groups such as the EICC and international organizations such as the UN and the OECD, are likely to have a much larger impact than a university's (or many universities') proxy voting guidelines. Critics of the impact on poor workers in the DRC region argue that it is Dodd-Frank that is causing these harms.³⁹ Advocates argue that Dodd-Frank may be helping to shift minerals trade away from armed groups, at least where tracing and tagging are starting.⁴⁰ In either case, the Dodd-Frank provision may swamp and render moot the effect of universities' proxy voting guidelines.⁴¹ Still, as Prof. James Cox discussed with the ACIR on April 4, there may be a delay before the SEC's final rule becomes effective, both because the SEC has taken more than a year beyond its deadline to issue the final rule while it tries to sort out which companies will be covered and how to phase in the requirements, and because the SEC rule may then be challenged in court. Indeed the SEC rule might be challenged on the ground that its analysis is inadequate for failure to assess the full economic consequences of its reporting requirements on poor populations in the DRC region.⁴²

³⁸ Un Group of Experts, report S/2011/738 (Dec. 2, 2011), para. 368, p.99.

³⁹ David Aronson, "How Congress Devastated Congo," NY Times, op-ed, August 8, 2011, p.A19, at <http://www.nytimes.com/2011/08/08/opinion/how-congress-devastated-congo.html> ("Unfortunately, the Dodd-Frank law has had unintended and devastating consequences, as I saw firsthand on a trip to eastern Congo this summer. The law has brought about a de facto embargo on the minerals mined in the region. ... For locals ... the law has been a catastrophe [by worsening poverty, while benefitting smugglers and armed groups].").

⁴⁰ See UN Group of Experts, report S/2011/738 (Dec. 2, 2011); Sasha Lezhnev, "A Window for Reform in Eastern Congo: November's Elections and Three Achievable Steps on Conflict Minerals," Enough Project (November 2011).

⁴¹ The UN Group of Experts observed that "the adoption of the Dodd-Frank Act" made the United States the only country thus far "to have adopted legislation requiring individuals and entities using gold, tin, tantalum and tungsten from the Democratic Republic of the Congo and neighbouring countries in their products to implement due diligence and to disclose such implementation. The Act has had a huge impact on awareness and implementation of the Group's due diligence guidelines both in the United States and globally." UN Group of Experts, Report S/2011/738 (Dec. 2, 2011), para. 392, p.104.

⁴² Courts have recently rejected SEC rulemakings on the ground that the SEC failed to conduct adequate analyses of the rules' full economic impacts, as required by section 3(f) of the Exchange Act, 15 U.S.C. 78c(f). See *Business Roundtable v. SEC*, 647 F.3d 1144 (D.C. Cir. 2011); *Chamber of Commerce v. SEC*, 412 F.3d 133, 143 (D.C. Cir. 2005).

Although a university's policy might have little effect on the behavior of corporations or militant groups, it may still be a useful signal that raises awareness of the conflict in the US and thereby leads to other beneficial changes in public and private policies. In the face of complexity, Duke University may serve its educational function not only by increasing awareness of an egregious problem, but also by increasing understanding of a complex problem and of the full consequences of alternative response measures. This is a crucial reason for the Board of Trustees' inclusion of the criterion of "alleviating" the social injury. In light of the complexity of the conflict in the DRC region, and the potential for both intended and unintended consequences of measures to avoid conflict minerals, the ACIR sees a need for continuing evaluation of the full consequences of response measures. The ACIR finds the students' requested proxy voting guideline to be moderate in its call for reporting rather than divestment and in its call for support of "well-written and reasonable" shareholder resolutions, thereby giving DUMAC flexibility in the exercise of the proxy voting guideline. Linda Kimball of Stanford reported to the ACIR on April 4 that Stanford had not experienced difficulties with its (identically worded) policy. And of the experts interviewed by the ACIR, even those concerned about potential complex effects as noted above, those who commented on the proposed measures suggested that adoption of the moderate proxy voting policy would be likely to have small or no costs and could have some benefits. In addition, the ACIR sees value in a second measure, encouraging engagement with companies and others as part of a process of learning and evaluation of the full consequences of alternative policy options as circumstances change and understanding improves; and in a third measure, seeking a review of the first two recommendations after five years. These recommendations are set forth in section 1 above.

6. Appendices

The Appendices appear on the following pages, and are enumerated in the Table of Contents on page 1 of this report.