



Institute of Human Rights and Business

**Commodity Trading Sector UNGPs Guidance
Project**

Concern: Response to the public consultation of the “The Commodities Trading Sector. Guidance on Implementing the UN Guiding Principles on Business and Human Rights”

Dear Sirs,

MKS (Switzerland) SA is in the business of sourcing, refining, supplying and trading precious metals products. Fighting serious abuses of human rights, avoiding contribution to conflict over the supply chain and complying with the highest standards of anti-money laundering and combating terrorist financing are central tenets of our operating procedures. Therefore, we are committed to support measures to help companies fighting human right abuses and welcome the idea of having a guide to facilitate the implementation of the UN Guiding Principles of Business and Human Rights. However, it is imperative that any guidelines should provide the possibility for a realistic implementation, and as a result we have taken the liberty of outlining hereafter some requirements that are either very difficult or almost impossible to fulfill and thank you in advance for your consideration of the same:

- **Scope of the Guidance – Companies’ activities and business relationships (page 8, paragraph 2):** We understand commodity traders should assess human rights risk on their business partners. We already perform such assessment as part of our due diligence process. However, in some cases a full due diligence cannot be carried out beyond the first tier and it should therefore be specifically stated either in the text or in a foot note that a due diligence beyond the first tier is not expected in all cases. Also, we would suggest having a proper definition of what is meant by “beyond the first tier”.
- **Section 3.1 v. Apply the commitment to business relationships (page 19):** Since we do not have sufficient leverage with our counterparts in most cases to require specific commitments from them in our contractual agreements, we would highly recommend to amend the paragraph by encouraging, instead of requiring the company to

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insert human rights expectations in the formal agreement or documentation with business relationships.

- **Section 3.2 i, iv and v) with respect to Identifying and Assessing Human Rights Impacts (page 24 and following):** While we can apply pressure on our counterparts by discontinuing our relationship with them, It is impossible for us, who has not caused or contributed to human rights abuse, to directly engage with affected stakeholders. We would therefore recommend emphasizing more on the last two paragraphs of Section V as they are key here.
- **Section 3.3 & 3.6: Key Actions (page 36, resp. 47):** We would strongly recommend to clearly distinguish, among the actions to take to prevent and mitigate adverse impact, respectively to cooperate in remediation, the following situations between “cause”, “contribute” and “linked through business relationship”.
- **Section 3.4 Tracking Performance (pages 41 Key actions & 42 Develop Indicators and identify trends/patterns of recurring problems):** Here also, we would strongly recommend distinguishing whether a company “causes”, “contributes” or is “linked through business relationship” and should a company be linked through business relationship to a human right abuse, it should rely on the internal report of the company which contributes to or causes the abuse as a basis for its assessment.

We are convinced that the recommendations above, would dramatically enhance the uptake and implementation of the UNGPs while keeping intact the objectives, the scope and structure of the guidance.

Thanking you in advance for your kind consideration and we remain at your disposal should you have any questions or if we can be of any further assistance in this project.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'MS' followed by a stylized flourish.

Marwan Shakarchi
Chairman