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# MKS WEEE & RoHS Position Statement Revision F - September 2011

## Directive Background:

The European Union adopted two directives in 2003 relating to electrical and electronic equipment. The Directive on Waste Electrical and Electronic Equipment (the **WEEE directive**) generally requires EU Member States to establish criteria for the collection, treatment, recycling and recovery of certain waste electrical and electronic equipment, largely at producer responsibility and expense. The Directive on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (the **RoHS directive**) generally requires EU Member States to prohibit placing certain electrical and electronic equipment on the market if it contains higher than specified levels of lead, cadmium, mercury, hexavalent chromium, polybrominated biphenyl (PBB) and polybrominated diphenyl ether (PBDE).

Although requirements under the WEEE and RoHS directives have been in effect since 2005 and 2006, respectively, both of the directives are required to undergo formal review and revision periodically. The "recast" of the RoHS directive was published on July 1, 2011, and the European Parliament and Council are expected to finalize revisions to the WEEE directive possibly in late 2011. These and other revisions will impose additional requirements (including declarations of conformity) and eliminate or phase out certain exemptions for categories of products and applications of substances (including RoHS exemptions for medical devices and monitoring and control instruments).

We note that "copycats" of the WEEE and/or RoHS directives exist or are anticipated in other jurisdictions, including China, California, Japan, Korea, Thailand and elsewhere. This position statement only addresses the EU WEEE and RoHS directives described above. We need to stay informed of and comply with applicable requirements in all jurisdictions where we sell our products.

## MKS Product Compliance:

MKS has been working with suppliers and customers for years and has invested significant resources to ensure that products entering the EU market comply with all applicable requirements under the RoHS and WEEE directives. MKS maintains a comprehensive WEEE and RoHS compliance program and continues to closely monitor and adapt to developments in this area. Aspects of our compliance program about which we frequently receive inquiries are described below. This is not, however, intended to be an exhaustive discussion of all requirements that may affect us or an assessment of any individual products or product lines.

### OEM Products

Some MKS product lines are delivered to OEM customers to be included as part of semiconductor manufacturing or medical diagnostic equipment.

**Semiconductor Market** - Based on internal assessments, discussions with key customers and confirmation with outside regulatory attorneys, we believe that most of our semiconductor customers' equipment should be considered a "large-scale stationary industrial tool" and/or a "large-scale fixed installation" under the RoHS recast. Accordingly, MKS products that are incorporated into large-scale industrial tools, large-scale fixed installations and other exempt equipment are also likely to fall outside the scope of the WEEE and RoHS directives. It is unclear, however, how certain RoHS and WEEE directive revisions will be finalized and interpreted. We are closely monitoring this issue and will continue to adapt our compliance strategy to known requirements as applicable.

**Medical Equipment Market** - Based on internal assessments, discussions with key customers and confirmation with outside regulatory attorneys, we believe that most of our medical market customers' equipment falls into the category defined as "medical devices". Although medical devices must comply with requirements under the WEEE directive, they are currently outside of the scope of the RoHS directive. Accordingly, MKS products that are incorporated into medical devices are also likely to fall outside the scope of the RoHS directive. Medical devices, however, will be required to comply with the revised RoHS directive if they are placed on the market.



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on or after July 22, 2014. It is possible that certain exemptions may be available. We are closely monitoring this issue and will continue to adapt our compliance strategy to known requirements as applicable.

### **Stand Alone Products**

Some MKS product lines are sold as "stand alone" products that are not incorporated into OEM equipment. Based on internal assessments and confirmation with outside regulatory attorneys, we believe that most of these other product lines fall into the category defined as "monitoring and control instruments". Although monitoring and control instruments must comply with requirements under the WEEE directive, they are currently outside the scope of the RoHS directive. Monitoring and control instruments, however, will be required to comply with the revised RoHS directive if they are placed on the market on or after July 22, 2014, and industrial monitoring and control instruments will be required to comply if they are placed on the market on or after July 22, 2017. It is possible that certain exemptions may be available. We are closely monitoring this issue and will continue to adapt our compliance strategy to known requirements as applicable.

### **Risks Beyond MKS' Control:**

1. Even where MKS or its products are not subject to direct obligations pursuant to the WEEE or RoHS directives, certain of its EU customers or business partners may be, depending on their specific operations and products. This position statement does not address all of the WEEE and RoHS compliance considerations that may be relevant to such parties in light of their particular circumstances and is not intended as compliance advice. Furthermore, the WEEE and RoHS directives are implemented and enforced through local laws and regulations in each EU Member State; affected parties must therefore ensure compliance with the local requirements of each relevant jurisdiction.
2. Any EU Member State or any other enforcement or regulatory authority may disagree with our assessments. Because the WEEE and RoHS directives are still relatively new, are subject to further revision, may be enforced inconsistently within and among EU Member States and for other similar reasons, it is impossible to predict with certainty all requirements under the WEEE and RoHS directives.
3. It is possible that certain parts, components or process materials may become unavailable as a result of RoHS and WEEE related developments in the supply chain. If MKS needs to make process or design changes due to such unavailability, then there may be an impact on our products and/or delays in shipment. We intend to continue to serve the EU and other markets in full compliance with applicable laws and expect our suppliers and customers to be partners in that effort.

### **DISCLAIMER:**

**THIS POSITION STATEMENT IS FOR INFORMATIONAL PURPOSES ONLY, DOES NOT CONSTITUTE A LEGAL REPRESENTATION AND DOES NOT CREATE OR CONFIRM THE EXISTENCE OF ANY RIGHTS, LIABILITIES OR OBLIGATIONS OF MKS, ITS AFFILIATES OR ANY OF THEIR RESPECTIVE CUSTOMERS OR ANY OTHER PERSON. THE SALE OF MKS PRODUCTS SHALL BE GOVERNED EXCLUSIVELY BY THE TERMS AND CONDITIONS SET FORTH IN THE APPLICABLE MKS SALE AGREEMENT.**

**MKS' assessments contained in this position statement are solely MKS' opinion. MKS does not guarantee the accuracy or completeness of its evaluation and neither MKS' customers nor any other party may rely on this position statement. The information contained herein is based upon information MKS has obtained as of the date indicated at the top of this position statement. MKS does not have any obligation to update this position statement. Any MKS customer or other person needing information or guidance about the WEEE and RoHS directives should seek advice of legal counsel.**