FINANCIAL REPORTING COMMITTEE
INTERNATIONAL HUMAN RIGHTS COMMITTEE
SECURITIES REGULATION COMMITTEE

December 5, 2010

Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Via email to rule-comments@sec.gov

Re: Section 1502 of the Dodd-Frank Act

Ladies and Gentlemen:

This letter is submitted on behalf of three committees of the Association of the Bar of the City of New York: the committees on Financial Reporting, International Human Rights and Securities Regulation. Our committees include a wide range of practitioners whose areas of interest and expertise include international human rights and financial reporting under the securities laws.

We are responding to the request of the Securities and Exchange Commission for comment on the rulemaking the Commission is required to undertake to implement Title XV of the Dodd-Frank Wall Street Reform and Consumer Protection Act. We appreciate the Commission's solicitation of public comment prior to the issuance of proposed rules, and we acknowledge the difficulty of the challenges the Commission and its staff face in implementing the Dodd-Frank Act.

Our comments concern the implementation of Section 13(p) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), which was added by Section 1502 of the Dodd-Frank Act. We have not sought to address the implementation of Section 15(q) of the Exchange Act, added by Section 1504 of the Dodd-Frank Act, or any other provision of the Dodd-Frank Act.

Section 1502 addresses an emergency humanitarian situation in the eastern Democratic Republic of the Congo by requiring disclosures concerning "conflict minerals" in order to deter the use of those minerals to finance armed conflict in the region. To meet the purpose of the statute, the disclosures must be specifically designed, readily available and usable by diverse constituencies. We believe the Commission can best achieve this by establishing new forms and adopting new rules governing the preparation and filing of those forms. Specifically, we suggest that the Commission should:

- adopt a specific form to be filed annually on the EDGAR System by each issuer subject to the requirements of Section 13(p) of the Exchange Act, but only by those issuers; and

- amend Form 10-K and Form 20-F, which reporting companies use to file annual reports pursuant to Sections 13(a) and 15(d) of the Exchange Act,[1] to include check boxes on the cover indicating whether the issuer is required to file a report under Section 13(p).

This approach is consistent with the statutory mandate, which contemplates a specific disclosure regime for Section 13(p). It would permit the Commission to develop forms and rules that are specifically tailored to meet the requirements of that section in light of the broader purposes of Section 1502 as a whole.

We understand that responsibility for developing a proposal to implement Sections 13(p) has been allocated to the staff of the Division of Corporation Finance, and that the Division staff may be considering a different approach, in which the information required by Section 13(p) would be included in the annual reports required to be filed on Form 10-K. We urge the Commission and the Division staff to consider the separate reporting regime described above, for the following reasons.

- The information called for by Section 13(p) will be easier to locate and to use if it is provided in separate reports. The users of the information will include concerned citizens, media, academics, governments, non-governmental organizations and others. Unlike the investor audience for a Form 10-K, they may be less familiar with the EDGAR system or the structure of other reports under the Exchange Act. Using a single, uniform presentation in a separate form will better promote the objectives of Section 13(p) by making information more readily accessible both for its intended users and for other investors that wish to review it.

- A separate reporting regime can be better tailored. Section 13(p) will require specific and complex implementation. A new form will give the Commission more flexibility to tailor the new disclosure requirements to meet the statutory objectives, without requiring compromises to address the competing objectives of reporting under Sections 13(a) and 15(d) and the Securities Act of 1933, as amended (the "Securities Act"). Attempting to integrate the new requirements with the existing annual reporting for investors will give rise to conflicts, compromises and inconsistencies that will weaken each reporting regime.

- The deadlines for reporting on Form 10-K should not apply to reporting under Section 13(p). The deadlines for annual reports on Form 10-K were carefully developed in light of the purposes of the annual report to investors and practices in the marketplace. There is no reason those deadlines should apply to reporting

[1] For simplicity, the discussion below refers only to reports on Form 10-K, but the same considerations apply to annual reports of foreign private issuers on Form 20-F.

under Section 13(p). The information-gathering and presentation under Section 13(p) will be very demanding, and to impose the Form 10-K deadlines on it will require the Commission either to make unnecessary compromises in the interest of feasibility, or to subject a small subset of reporting companies to a risk of being unable to file timely reports, with adverse consequences for investors in those companies.

- The extensive regulatory framework surrounding annual reports on Form 10-K, if it is made applicable to reporting under Section 13(p), will have unforeseen consequences that may be contrary to the purposes of one or more of the reporting regimes. For example, reports on Form 10-K are incorporated by reference into registration statements under the Securities Act, and the audit requirements of Section 13(p) will be challenging to reconcile with the expert consent requirements of the Securities Act. Avoiding these complications, by using separate reports, will not compromise the purpose for which the disclosure is being required. The use of separate reports also need not weaken the sanctions under the Exchange Act applicable to reporting under Section 13(p), which will play a role in ensuring that the new disclosures are prepared with the same rigor as other Exchange Act reports.[2] In any event, the Commission can tailor substantive and procedural safeguards, appropriate to the matters being addressed, in developing the new forms.

- Integrating the disclosure regimes will not be efficient. We do not see any significant advantage to integrating the regime under Section 13(p) with the existing regime for annual reports on Form 10-K. It will not simplify the implementation process for the Commission, and it will not simplify ongoing reporting.

[2] Unless the Commission determines to provide exemptions, the new reports will be subject to the liability provisions of Sections 10(b), 18 and 20 of the Exchange Act and Rule 10b-5 under the Exchange Act, and to the requirement to maintain disclosure controls and procedures under Rules 13a-15(a) and 15a-15(a). This letter does not address whether the Commission should provide exemptions under one or more of these provisions – a matter on which members of the Committees may have diverse views but which is independent of our proposal.

We thank you again for the opportunity to comment on the implementation of Section 13(p) of the Exchange Act. Members of our committees would be happy to discuss any aspect of this letter with the Commission staff.

Very truly yours,

Nicolas Grabar, Chair	Stephen L. Kass, Chair	Robert E. Buckholz, Chair
Financial Reporting Committee	*International Human Rights Committee*	*Securities Regulation Committee*

cc.: Samuel W. Seymour, President
Alan Rothstein, General Counsel
Association of the Bar of the City of New York