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VIA ELECTRONIC DELIVERY

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Re: Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")

Dear Ms. Dubberly, Ms. Kung and Mr. Fieldsend:

Enclosed with this letter, please find comments of The Enough Project to the proposed rules promulgated under Section 1502 of the Dodd-Frank Act.

Please do not hesitate to contact me should you have any questions or wish to discuss these comments.

Sincerely yours,

Deborah R. Meshulam

DLA Piper LLP (US)
Deborah R. Meshulam

Proposed Letter Regarding Proposed Rules Enacting Section 1502

I. Introduction

The Enough Project ("Enough") of the Center for American Progress ("CAP") respectfully submits these comments on the Securities and Exchange Commission's ("Commission") proposed rules to implement Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Section 1502"). The purpose of Section 1502, as expressed by Congress, is to address "the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo [which is] helping to finance conflict characterized by extreme levels of violence in the eastern Democratic Republic of the Congo." The goal of Enough, as exemplified by our September 24, 2010 submission to the Commission, is to help businesses and consumers understand how they can end purchases of products containing the conflict minerals that are funding this violence, the world's deadliest conflict since World War II, which to date has left over five million people dead.

The Commission's proposed rules represent a strong and practical approach to implementing Section 1502. The proposed disclosure and reporting requirements foster a much needed level of transparency which will help expose the conflict mineral supply chain. Enough strongly supports the equal application of these rules to all conflict minerals, the application of these rules to both issuers that directly manufacture products as well as those that contract for the manufacture of their products, and the inclusion of mining issuers as persons subject to the rules.

While Enough supports the Commission's proposed rules, Enough also has several recommendations. Adopting the proposals outlined in Section III below will further advance the Congressional intent behind this statute and remain within the bounds of the legislation. By incorporating Enough's recommendations, the Commission will strengthen the proposed rules and close unintended, yet potentially debilitating, loopholes. In sum, and as discussed below, the Commission's final rules should (1) tie reasonable country of origin inquiry to a process for determining the origin of ores at the smelter level; (2) define key terms to eliminate uncertainty and confusion, (3) define recycling, (4) adopt a due diligence framework that includes the key guiding principles behind the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*[1]; and (5) require companies to file rather than furnish their Conflict Minerals Report with the Commission.

Enough notes that critics of the legislation are quick to predict that private sector investors and companies may walk away from the Congo if faced with meaningful due diligence and reporting requirements. On the contrary, Congo's mineral reserves are too great for world markets to ignore. For example, Congo's supply of tantalum accounts for at least 25 percent of the world's global supply. Furthermore, deadlines set by the legislation are already helping to speed up industry tracing initiatives by leading companies, including for example, Apple Inc.'s identification of its smelters, the Electronic Industry Citizenship Coalition's ("EICC") tantalum audit system, and the Tin Supply Chain Initiative (iTSCi) tracing system in Rwanda, which would allow for in-region sourcing of minerals. In addition, straightforward and workable regulations actually minimize the burden on companies. They allow companies and NGOs, like

[1] http://www.oecd.org/dataoecd/62/30/46740847.pdf

Enough, to work together to increase transparency and help reduce the deadly violence that exists in the Congo. Indeed, this is the Congressional intent and mandate of Section 1502.

II. The Proposed Rules are Proper in Scope

A. The rules properly apply equally to all conflict minerals.

Enough agrees with the Commission's determination that the rules implementing Section 1502 should apply equally to all conflict minerals as defined in the Statute. Considering the statute as a whole leads only to the conclusion that the law does not differentiate between any of the specified conflict minerals. We agree with the Commission that application of the rules implementing the statute should not deviate from the statutory scheme. Gold, in about as equal measure as tin ore, is the most lucrative source of funds for armed groups in eastern Congo. The rebel group FDLR, led by the perpetrators of the Rwandan genocide, is particularly dependent on gold for its livelihood, as documented by the United Nations Group of Experts on the Democratic Republic of Congo.[2] The FDLR controls mines and trading routes in North and South Kivu, and its fighters earn hundreds of millions of dollars from a trade that the Congolese Senate estimated to be worth $1.24 billion annually.[3] Therefore, supply chain due diligence on gold is particularly important in the overall conflict minerals reporting framework.

B. The rules properly apply to issuers that contract to manufacture products.

Applying Section 1502's disclosure requirements to both companies that manufacture products and companies that contract to manufacture products is consistent with the statute, its legislative purpose, and well-established legal principles. Enough agrees with the approach articulated in the Commission's Proposed Rules.

Section 13(p)(1)(A)(ii) of the Exchange Act requires "a description of the products manufactured or *contracted to be manufactured* that are not DRC conflict free." (emphasis added). It would render the emphasized portion meaningless if the Commission enacted rules that applied Section 1502 only to companies that directly manufacture their products. As the Commission states in its proposed rules, applying the disclosure requirements to companies that contract for the manufacture of their products is consistent with the "totality of the provision." *See* 75 Fed. Reg. 80948, 80952 (Dec. 23, 2010). This determination is consistent with general principles of statutory interpretation requiring a statute be interpreted and applied as a whole.[4]

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[2] UN Group of Experts on the Democratic Republic of Congo, 29 November 2010, S/2010/596. See especially Paras. 196-9.

[3] Report by the Senate of the Democratic Republic of Congo, September 2009. http://www.gao.gov/new.items/d101030.pdf

[4] The United States Supreme Court has consistently recognized this principle. *See Cooper Indus. V. Aviall Servs.*, 543 U.S. 157, 166 (2004) (rejecting a statutory interpretation that would render part of a statute superfluous); *Hibbs v. Winn*, 542 U.S. 88, 101(2004) (same); *United States v. Morton*, 467 U.S. 822, 828 (1984) ("We do not, however, construe statutory phrases in isolation, we read statutes as a whole.") *See also National Ass'n of Recycling Indus., Inc. v. Interstate Commerce Comm'n*, 660 F.2d 795, 799 (D.C. Cir. 1981) ("[I]t is a fundamental principle of statutory construction that effect must be given, if possible, to every word, clause and sentence of a statute so that no part will be inoperative or superfluous, void or insignificant.") (internal quotation marks omitted).

Indeed, it undermines the purpose of Section 1502 to exclude from its application companies that contract for the manufacture of their products. Since conflict minerals are most commonly used in electronics and other technological products that may be manufactured by a different entity than the one that brands, markets, and profits from the product, a narrow-reading of Section 1502's application would be contrary to its purpose. It would also invite companies that currently manufacture their products to contract out that manufacturing in order to evade the disclosure requirements.

Further, applying Section 1502's disclosure requirements to companies that contract for the manufacture of their products is consistent with well-established legal principles. For example, a company that markets a product cannot avoid liability for injuries that product may cause by simply showing that it contracted for the manufacture of that product.[5] Similarly, a company that holds itself out as the owner and/or proprietor of a product cannot avoid legal responsibility simply because an agent manufactured the product.[6]

Finally, as noted in footnote 5 of our initial submission, other statutory schemes have recognized that the manufacture of a product, includes "the production . . .either directly or indirectly, . . . and includes any packaging or repackaging . . . or the labeling or relabeling of its container." *E.g.* United States Controlled Substances Act, 21 U.S.C.A. § 802(15) (2007).

C. The rules properly apply to mining issuers.

Enough agrees with the Commission's decision to consider mining issuers as persons who are manufacturing conflict minerals when they extract those minerals. *See* 75 Fed. Reg. 80948, 80953 (Dec. 23, 2010). This is consistent with national and international norms. As noted in footnote 5 of our initial submission, the United States Controlled Substances Act's definition of manufacture includes "production… either directly or indirectly by extraction from substances of natural origin." 21 U.S.C.A. § 802(15) (2007). Similarly, the OECD's due diligence guidelines apply to miners and the due diligence guidelines drafted by the UN Group of Experts and adopted by the UN Security Council state that due diligence should apply to "individuals and entities prospecting, exploring for and extracting minerals…" UN Group of Experts at 84.

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[5] *See* Restatement (Third) of Torts: Product Liability Ch. 3 § 14 (1998) ("One engaged in the business of selling or otherwise distributing products who sells or distributes as its own a product manufactured by another is subject to the same liability as though the seller or distributor were the product's manufacturer."); Restatement (2d) of Torts § 400 (1997) ("One who puts out as his own product a chattel manufactured by another is subject to the same liability as though he were its manufacturer."). *See also Reiss v. Komatsu Am. Corp.*, 2010 WL 3238901, (D.N.D., Aug 17, 2010) (citing the above Restatement sections and noting that a majority of jurisdictions have adopted this approach); *Kasel v. Remington Arms Co.*, 24 Cal. App.3d 711, 723 (Cal. Ct. App. 1972) (finding that company that marketed product in the United States could not avoid product liability by claiming that it did not manufacture the product in question).

[6] *See* Restatement (Third) of Agency § 7.03(1)(a)(ii) (2006) ("A principal is subject to direct liability to a third party harmed by an agent's conduct when… the agent's conduct, if that of the principal, would subject the principal to tort liability…").

Including mining issuers is consistent with the law's overarching intent – to create transparency in the supply chain from mine to product. Exempting mining from regulation would eliminate a critical component of transparency from the supply chain and undermine the law as enacted by Congress.

III. Recommendations

While supporting the Commission's proposed rules, Enough also has several recommendations to strengthen the proposed rules and reduce uncertainty in their application.

A. Specify Reasonable Country of Origin Inquiry Steps and Disclosures

We support the proposed requirement that companies disclose the reasonable country of origin publicly to the Commission and post it on the Registrant's website. The Commission should require, however, that an issuer's reasonable country of origin inquiry include a determination of the origin of ores at the smelter. Such a requirement minimizes the risk that issuers may avoid, intentionally or unintentionally, compliance with the disclosure requirements and the filing of a conflict minerals report. Through this process, an issuer should identify red flags that would alert it to the possibility that the minerals in its products support conflict in the DRC and adjoining countries.[7]

The smelter is the key choke point in the minerals supply chain. It is, therefore, critical that the reasonable country of origin inquiry include a determination of the origin of ores used at the smelter level. Companies could easily and effectively do this by reviewing information from processing facilities, such as purchasing documentation and bills of lading. Doing so would allow them to determine the country of origin for the minerals in their products.

Alternatively, the reasonable country of origin inquiry could include reliance on an industry wide process that deems smelters "conflict free." The Commission should require, however, that issuers may rely on an industry wide process only if that process is governed by standards comparable to, or the same as, the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.*

Further, a description of the steps the issuer is undertaking to ensure that its suppliers are sourcing from "conflict free" smelters[8] should be included in the issuer's annual disclosure. The issuer should also disclose the list of "conflict free" smelter(s) the issuer is using (or will use) for its products. Such a disclosure provides investors with material information regarding the sufficiency of an issuer's threshold inquiry relating to the applicability of the statute and will

[7] http://www.oecd.org/dataoecd/62/30/46740847.pdf p. 20

[8] Early in December, The Elm Consulting Group International, LLC ("Elm") completed one of the first third-party audit/traceability engagements in response to The Conflict Minerals Law and OECD program. The audits resulted in the first "Conflict-Free Smelter" designation in the United States under the audit program for tantalum.
Elm is launching a broadened Conflict Minerals Traceability Auditing service to include tin, tungsten and gold. In conjunction with this, Elm has developed a short summary review of conflict minerals audit programs – based on our industry-leading first-hand experience conducting these audits, and leveraging our extensive international senior-level health, safety and environmental (HSE) auditing expertise.

encourage issuers to make an appropriate inquiry before concluding that their products do not contain conflict minerals that originate in the DRC and adjoining countries thereby obviating the need to file a conflict minerals report. This information will for example, enable investors and interested stakeholders to compare the issuer's smelters to a list of approved conflict free smelters from an appropriate industry wide process or to a list of smelters identified by the Department of Commerce as sourcing conflict minerals from the DRC or adjoining countries.

Such a requirement will minimally impact companies because they can satisfy it by relying on documentation already in place (such as bills of lading). Yet such a requirement will effectively further the goals of Section 1502. For example, as processing facilities are deemed conflict free based on OECD (or comparable) due diligence guidance, issuers could contractually obligate their suppliers to source from processing facilities deemed conflict free.

Importantly, leading companies and industries are proving that it is possible for companies to conduct due diligence and tracing to ascertain the sources of their minerals. Leading companies have already started to develop systems to ascertain the origin of the minerals in their products and map their supply chains in order to avoid financing conflict in the DRC or adjoining countries. Key examples include:

- Apple, in 2010, completed a detailed investigation into the use of extractives at all levels of its supply base. Apple then mapped its supply chain to the smelter level, so that it knew which of its suppliers are using tantalum, tin, tungsten, or gold and where they are getting the metal.[9]

- EICC has a conflict-free smelter audit program and is nearly finished with its audit of tantalum smelters. It plans to complete audits of tin, tungsten, and gold smelters in 2011.[10]

- Hewlett Packard and Intel have disclosed their leading suppliers on their website, and Hewlett Packard has begun to publicly disclose its smelters for the conflict minerals in its supplier report.[11]

- A group of large gold mining companies and refiners are developing a planned supply chain reform project through the World Gold Council, but this initiative needs to be made public. The council incorporates 60 percent of the world's leading mining companies and the ten largest refiners.

Enough's recommendation would level the playing field so other companies' can do what some companies are already doing.

[9] Apple Supplier Responsibility 2011 Progress Report http://images.apple.com/supplierresponsibility/pdf/Apple_SR_2011_Progress_Report.pdf

[10] EICC Audit presentation - http://www.eicc.info/documents/VAP_Introduction.pdf, http://www.eicc.info/documents/Conflict-FreeSmelterFAQ.pdf

[11] See http://www.hp.com/hpinfo/globalcitizenship/environment/supplychain/supplier_list.pdf and http://www.intel.com/Assets/PDF/Policy/CSR-2009.pdf

B. Define Section 1502's Key Terms

The Commission should define several key terms in Section 1502. By defining key terms, the Commission can eliminate perceived ambiguities and reduce any uncertainty regarding the scope, application, or meaning of Section 1502. In its September 24, 2010, comments, Enough proposed definitions of the following key terms in its prior letter to the Commission. In those comments, Enough also demonstrated that its proposed definitions are consistent with the policy behind Section 1502, relevant case law, federal statutes, and other federal regulations that address analogous standards. The Enough Project incorporates and refers to those definitions here. Specifically, The Enough Project recommends the Commission define the following:

1. Necessary;
2. Functionality;
3. Production; and
4. Manufactured.

Should the Commission decline to define these important terms, Enough respectfully request that the Release accompanying the Commission's final rules make clear that these terms include the concepts contained in the definitions proposed by Enough.

C. Define Recycle and Require Due Diligence

Enough agrees with the Commission's proposal that issuers claiming that their minerals are recycled should describe how that determination was made in a conflict minerals report that will then be audited by a third party. Enough also agrees with the Commission that it is acceptable for recycled conflict minerals to be described, through a Conflict Minerals Report, as DRC conflict free. Enough is concerned, however, that the exemption for recycled minerals could be used to circumvent the intent of the statute if manufacturing companies receive recently mined minerals altered to appear to be recycled or scrap. Therefore, the Commission should define "recycled" minerals as follows:

> Recycled metals are reclaimed end-user or post-consumer products, or scrap processed metals created during product manufacturing. Recycled metal includes excess, obsolete, defective, and scrap metal materials which contain refined or processed metals that are appropriate to recycle in the production of tin, tantalum, tungsten and/or gold. Minerals partially processed, unprocessed or a bi-product from another ore are not recycled metals. Recycled minerals do not include do not include gold coins, bars or financial gold. Recycled minerals also do not include scrap from jewelry and other manufacturing and any jewelry or other product not previously owned as end-use products by consumers

Failure to define recycled minerals could potentially allow issuers to claim that newly mined minerals, for example gold, are actually recycled. There are cases of companies turning

newly-mined gold into apparent manufacturing scrap in order to gain the benefit of a recycling designation. The steps that such companies are taking towards Section 1502 are described here in this excerpt from a metals industry publication:

> "Basic premise: Tantalum oxide concentrate currently in the $120-$150/lb range with Congo ore currently in the $40-60/lb range an approximate $100/lb difference.
> Our contacts in the rare earth minerals world tell us that tantalum scrap traders have found profitable ways to skirt the new Frank-Dodd Conflict Minerals Law … We have identified the following approximate costs and process steps to use scrap and avoid traceability requirements:
>
> 1. Extract metal from concentrate $15/lb
> 2. Refine metal to powder $15/lb
> 3. Refine metal powder to ingot $15/lb
> 4. Chop to ingot $10/lb (this is the only additional cost and is not traceable)
>
> The scrap chain would still allow for an increase in the basic price of Congolese material. From a price perspective, the above-referenced process still undercuts or matches the "clean material." In other words, the "alternative" non-regulated supply chain can operate profitably at today's tantalum market prices[12]."

In order to close this loophole, the Commission should require issuers who report that they use recycled minerals in their products to conduct due diligence through an audited statement of provenance for recycled content determinations. This would help ensure that what is claimed as recycled is actually recycled. Such diligence is of critical importance because definitions of recycled vary, and less responsible elements of the supply chain could falsely claim that newly mined minerals are actually recycled. Post-consumer recycled products should be the only sources of minerals, in addition to newly-mined minerals not supporting DRC conflict, described in a Conflict Minerals Report as DRC conflict free.

For gold, the Commission should require that issuers claiming that their products are recycled must independently verify with statements of provenance that the recycled gold contains 100% gold from post-consumer products, such as post-consumer jewelry, electronics, or dental gold.

This is necessary because there are cases elsewhere of companies turning newly-mined gold into apparent manufacturing scrap (to avoid taxes), and of operations making and subsequently "recycling" rough jewelry to earn a government pre-export manufacturing incentive. Gold coins and bars, or financial gold, should not be considered "recycled" as they do not represent a clear consumer, end-of-life product and are less identifiable as not newly-mined gold. Companies or individuals could launder DRC conflict gold by making claims that gold bars are recycled when they may be newly mined gold bars, or an un-quantified mix of recycled and newly mined gold.

[12] See e.g., "Loophole in Conflict Material Law Creates Opportunity for Scrap Dealers." Reisman, Laura, 2/24/11, available at http://agmetalminer.com/2011/02/24/loophole-in-conflict-minerals-law-creates-opportunity-for-scrap-dealers/

D. Specify Due Diligence Guiding Principles

It is critical that the Commission specify the key guiding principles of due diligence that issuers should undertake to determine whether they directly or indirectly support armed conflict in the DRC or adjoining countries. If the due diligence guidelines are left open to interpretation, companies will likely say "we asked our suppliers, and they promised they did not source conflict minerals," with no further questions asked. Specifying due diligence standards is consistent with Section 1502's provisions which indicate that the Commission has authority to determine whether due diligence processes are "unreliable." See Exchange Act § 13(p)(1)(C). Specifying due diligence standards would place the Commission's rules in accordance with the OECD due diligence guidelines and United Nations Security Council guidelines, adopted in December 2010.

(i) The Commission should adopt the guiding principles of the due diligence framework of the Organization for Economic and Community Development ("OECD") and United Nations ("UN")

The Commission's final rules should incorporate the due diligence framework adopted by the OECD and UN. Both proposals were developed in consultation with a broad range of actors including electronics, automotive, gold refining, jewelry companies, as well as NGOs, smelters, and regional governments. This approach is consistent with the Multi-Stakeholder letter and the letter submitted by Undersecretary Hormats and Otero[13] asking that the SEC harmonize its guidance with that of the OECD and UN group of experts.

Adoption by the Commission of the OECD due diligence guidelines will create a standard for industry-wide DRC conflict free smelter validation programs to follow. The OECD due diligence guidelines recognize that not all actors are similarly situated within the supply chain and take that into account when delineating the specific steps and disclosure requirements each actor should undertake to satisfy the requirements. The OECD due diligence framework provides an appropriate and balanced approach that informs investors and other interested stakeholders about supply chain risks related to the sourcing of conflict materials, including support for armed conflict, while at the same time presenting a manageable, and minimally burdensome framework for companies.

The OECD guidelines formed the basis for the UN Group of Experts due diligence guidelines adopted by the UN Security Council in November of last year. As articulated in our September submission, and as proposed by the Commission, an industry-wide due diligence process is acceptable as long as it is audited by an independent third party. We agree with the Commission that industry wide audits should meet national and international standards. As noted in Enough's September submission, the EICC has initiated an audit process for tantalum smelters, a chokepoint in the supply chain for tantalum. This process is still incomplete and needs refinement, but is an example that shows how end-user companies (persons affected by the legislation) are able to conduct due diligence through proactive action, and at times through industry associations.

[13] http://www.sec.gov/comments/s7-40-10/s74010-42.pdf

If an issuer relies on an industry-wide process that deems smelters "conflict free" to satisfy its due diligence obligations, the Commission's rules should require that in addition to meeting the standards the same as or comparable to the OECD guidelines, the issuer must disclose, in its conflict minerals report, a list of the "conflict free" smelters it using (or will use) for its products, a description of the process used to deem the smelter "conflict free" and the steps an issuer is taking to ensure its suppliers are sourcing from "conflict free" smelters. Additionally, if a "conflict free" smelter processes minerals from the DRC or adjoining countries, the Commission should require issuers to disclose, the name of the processing facility, the country of origin of the conflict minerals, efforts undertaken to determine the mine of origin or location with greatest specificity for the minerals in its products, and a summary of the results of the independent third party smelter audit detailing the points described above.

(ii) The Commission should specify a due diligence framework that would avoid a determination of unreliability.

Section 1502 states that an issuer's conflict minerals report will not comply with the law if it relies on "due diligence processes previously determined by the Commission to be unreliable." The Commission should provide initial guidance to issuers as to what due diligence processes, if undertaken, will avoid an unreliable determination. Those due diligence processes should include:

a. A conflict minerals policy;

b. A supply chain risk assessment that includes "upstream" and "downstream" due diligence, including a description of efforts made and the result of efforts to obtain information outlined in its upstream and downstream due diligence process;

c. A description of the policies and procedures to remediate instances of non-conformance with the policy;

d. An independent third party audit of the issuer's due diligence report, which includes a review of the management systems and processes; and

e. The results of the independent third party smelter audit, detailing items 1-10 below, with due regard taken for business confidentiality and other competitiveness concerns.[14]

The Commissioner's rules should require the Conflict Minerals Report to include a summary of the independent audit report detailing:

1. an on-the-ground risk assessment which addresses the points outlined in the OECD's Guidance Step 2 and Appendix;

[14] Business confidentiality and other competitive concerns means price information and supplier relationships subject to evolving interpretation.

2. all taxes, fees or royalties paid to government for the purposes of extraction, trade, transport and export of minerals;

3. any other payments made to governmental officials for the purposes of extraction, trade, transport and export of minerals;

4. all taxes and any other payments made to public or private security forces or other armed groups at all points in the supply chain from extraction onwards;

5. the ownership (including beneficial ownership) and corporate structure of the exporter, including the names of corporate officers and directors; the business, government, political or military affiliations of the company and officers.

6. the mine of mineral origin;

7. quantity, dates and method of extraction (artisanal and small-scale or large-scale mining);

8. locations where minerals are consolidated, traded, processed or upgraded;

9. the identification of all upstream intermediaries, consolidators or other actors in the upstream supply chain;

10. transportation routes.

E. Issuers should file their Conflict Minerals Report with the Commission.

Enough supports the Commission's proposal to add new items to Form 10-K, Form 20-F, and Form 40-F based on Section 1502. *See* 75 Fed. Reg. 80948, 80955 (Dec. 23, 2010). Enough recommends, however, that the Commission require issuers to file their Conflict Minerals Report, including the audit report, with the Commission, rather than simply furnish a copy. This distinction between "filing" the report, and simply furnishing such a report, is significant because it promotes greater transparency, makes Section 1502 more effective, and is consistent with the statute's intent and legislative history.

Requiring issuers to file their Conflict Minerals Report is consistent with the legislative intent and legislative history of Section 1502. As the Conference Report to the Dodd-Frank Act explains, Section 1502 "requires disclosure to the SEC by all persons otherwise required to file with the SEC…" Senator Durbin, speaking in support of both Section 1502 and a parallel amendment regarding oil, gas, and mining operations explained that the latter:

> [W]ould require companies listed on the New York Stock Exchange to disclose in their SEC filings extractive payments made to governments for oil, gas, and mining. This encourages greater transparency…. [Section 1502] would basically make the same requirement related to extractive minerals.

Cong. R. S3816 (May 17, 2010). Requiring issuers to file their report is consistent with these statements which speak to disclosure in filings. Requiring conflict mineral reports to be filed with the Commission as part of a company's other filings will hold companies accountable for their conflict mineral reports, promote greater transparency, and help facilitate access to this information.

F. Impose Reasonable Limits on Any Exemption of Stockpiled Materials

Stockpiled minerals may have originated in mines that support the conflict; however, it would be impractical to ask companies to trace the origin of these minerals. These minerals should be exempt as long as companies can document that the minerals in the stockpile pre-dated the implementation of Exchange Act Section 13(p).

IV. Conclusion

The Commission's proposed rules provided a good framework for complying with Section 1502. Expanding that framework to include rules based on the comments outlined above will strengthen the rules in a practical ways, eliminate loopholes and effectuate the intent of Section 1502. Finally, adopting the proposals outlined above will provide guidance to issuers regarding reasonable methods issuers of satisfying their obligations under the law. Such guidance provides issuers with a compliance roadmap while remaining flexible enough to meet issuers' circumstances.