

Executive Summary

The below comments and recommendations are submitted to the Securities and Exchange Commission ("Commission") in response to request for public comment on Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"). Give Peace A Deadline, a not-for-profit organization based in Boulder, Colorado, presents these comments and recommendations for the consideration of the Commission. As an organization, our mission is to end violent conflict by driving collaborative efforts with aid organizations, businesses, and government entities to multiply and accelerate their impact.

In offering our recommendations to the Commission, our goal is to ensure effectiveness of the Act and that its intent is maintained. We see the intent as providing public transparency of corporation's use of conflict minerals originating in the Democratic Republic of the Congo. It is our hope that this will enable consumers to pressure corporations into changing their sourcing habits and providing conflict-free certified products.

To support our goal, we offer suggestions to clearly define the parameters in which companies are required to trace, audit, certify and report on their sourcing of tin, tungsten, tantalum, and gold. We believe these recommendations are essential to the integrity of the bill and will ensure it is uniformly upheld.

Definitions

Based on our understanding of the legislation, we find that several key phrases in this legislation need specific definitions to ensure the intent of the legislation is met. Our recommended definitions seek to support the intent of the legislation while ensuring practicality in implementation.

The phrase "Conflict minerals are necessary to the functionality or production of a product manufactured by such person" can lead to potential loop holes in reporting on conflict mineral use within a product or production. Overall, we support the recommendations the Enough Project proposed in their comments to the Commission during a meeting on the 24th of September, 2010. In turn, we offer these additional suggestions.

1. Necessary—"Any ingredient, product, or process that is indispensable, closely related to, or directly essential to the production of the product; or any ingredient, product or process that is required to the financial success of marketability of the product."²

² In support of this definition, see *Kirschbaum v. Walling*, 316 U.S. 517, 525-26 (1942) and *Warren-Bradshaw Drilling Co. v. Hall*, 317 U.S. 88, 89 (1942)

- a. We recommend this definition because it will encapsulate all products and services that utilize common conflict minerals in any quantity. This is critical given that some of the largest consumers of conflict minerals are those entities that utilize very small quantities of raw material in a given product. An example of this is tin solder, which represents a very small amount of material on its own, but when taken holistically with all similar products created, the gross amount is significant.
2. Functionality- those qualities that are essential to the product's existence, use, or purpose².
3. Production- the making of the product at any point in the process, including instances in which a mineral or mineral derivative is present in other products that are necessary to produce the end product for sale.³

Additionally, we feel that a concrete definition of the phrase "Under the Control of Armed Groups" is important to help future interests operate legitimately within the DRC. Looking forward, for eastern DRC to stabilize and legitimize its mining, there will be a period of time where armed security will be necessary. Thus, "Under the Control of Armed Groups" should very specifically apply only to mines that are controlled by illegitimate militant groups, rather than mines that are controlled by legitimate parties which may have an armed security presence. To support that, we offer these definitions:

1. Legitimate- UN sponsored security, government of the DRC sponsored security, or any privately contracted security force working for mining operations that meet the DRC's standards of legitimacy.
2. Illegitimate – Any armed group which is not directly part of the UN or DRC government or which is not recognized as a privately contracted security force by the UN or government of the DRC; any entity defined by MONUSCO as illegitimate non-state actor.

The phrase "Minerals that directly or indirectly finance or benefit armed groups" must be rephrased to provide measurable parameters as to what qualifies as "directly" or "indirectly".

² In support of this definition, see *Mana Products, Inc. v. Columbia Cosmetics Mfg., Inc.* 65 F.3d 1063, 1068 (2nd Cir. 1995) (defining "functionality" in the trademark context as "the quality essential to the product's purpose," citing *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 775 (1992)).

³ In support of this proposed definition, see United States Fair Labor Standards Act, 29 U.S.C.A. 203(j) (2010) (defining "produced" as "produced, manufactured, mined, handled, or in any other manner worked on"); Chemical Weapons Convention Regulations, 71 Fed. Register 24918, 24919 (Dept. of Commerce Final Rule, Apr. 27, 2006) (to be codified at 15 C.F.R. 710, et. seq.) (defining "production" for the purposes of enacting the Convention on the Prohibition of Chemical Weapons as "all steps in the production of a chemical in any units within the same plant through chemical reaction, including any associated processes (e.g. purification, separation, extraction, distillation, or refining) in which the chemical is not converted into another chemical).

1. Indirectly finance - Any way in which an illegitimate armed group profits from the mining, sale, transport or taxation of minerals or mineral derivatives.

Reporting Standards

To meet the bills intent, we see a need for clearly outlined reporting standards. These standards must be accessible and affordable for companies to participate in. To that end, we offer the follow recommendations to support the Commission's development of reporting standards:

1. Reports from companies must be detailed and include information on the capacity of each mine they extract from, along with the weights and dates of individual mineral shipments. "Business confidentiality" is not a valid argument for not disclosing the price paid for minerals as businesses are purchasing from smelters, not the mines directly; disclosure is essential to curb smuggling and does not harm companies' competitive interests.
 - a. Such reporting will help to prove that minerals being reported as originating in a specific mine actually come from that mine. It's a regular occurrence for shipments from several mines to be mixed together at Comptoirs before being shipped to smelters. Reporting information on the mining location will eradicate the risk of conflict and non-conflict minerals being mixed together. This will further support companies' abilities to accurately disclose if they are using conflict minerals.
2. Equal reporting standards must be established for all potential conflict minerals. While tin, tungsten, and tantalum and gold are all different minerals, the fact that they currently have different reporting standards weakens the effectiveness of regulation and creates the possibility of loopholes.
3. All companies must disclose information in the format of a 10K to the SEC. If information is filed in the 8K format, it will defeat the purpose of the bill by inhibiting the public's ability to monitor the use of conflict minerals. Many companies say they would prefer to disclose information in the 8K format for the following reasons:
 - a. Payment information is likely to be viewed as competitively sensitive.
 - b. A country where security is an issue may have significant safety concerns regarding such disclosure.
 - c. Disclosure of precise payment information concerning projects where the underlying field crosses a country's borders could be viewed as a security risk or a state secret
 - d. Some countries are unlikely to appreciate the extraterritorial effects of the US legislation.

The reasons given for filing in the 8K format are not sufficient. Companies need to practice ethical standards in their work, and the above given reasons for filing in an 8K completely undermines the purpose of the bill. Furthermore, companies should not hide information which may contain unethical or illegal activities from their consumers. By filing in a 10K format, these concerns will be avoided and the purpose of the bill will be fulfilled.

Auditing Process

Ultimately, the extraction of the minerals and any profit made is dependent on the sale of the finished product to the general public. To support this, the trace, audit, and certify process should be executed in a manner similar to the Kimberley Process which empowers consumers to make informed purchasing decisions. Additionally, many of the steps from the Kimberly Process are transferable to an auditing process for conflict minerals.

The minimum requirements of countries participating in the Kimberley Process are to establish internal controls certifying diamonds as conflict free at the source and then to ensure they are shipped in such a manner that their continued legitimacy does not come into question. This includes:

1. Initial certification through inspection
2. Tamper proof containers
3. Exclusion of all countries not adhering to the Kimberly Process from the diamond market

The Kimberley Process has been successful both in dramatically alleviating human rights abuses in the diamond industry and in maintaining the financial success of the diamond industry. For example, conflict diamonds now account for only 0.1% of the world's production. Additionally, De Beers, the world's top diamond producer, has saved money since the enactment of the Kimberley Process. Between 2003 and 2009, the company's operating costs dropped from \$983 million to \$402 million in spite of the new auditing requirements.

To obtain the information necessary to make the legislation impactful, we recommend an auditing process that companies can easily participate in. It would seem unreasonable for every company that meets the definition of 'Such Person' to complete the in-depth auditing process independently. Therefore, we recommend a comprehensive auditing process that generates a framework in which required companies operate. This process includes the following three elements: 1) mineral tracking from source to export; 2) regular third party audits; 3) an independent mineral chain auditor. From these three elements, we propose the following standards be incorporated into a final auditing process:

1. An auditing and certification process that covers the following points in the manufacturing process: 1) Extraction at the original mine itself; 2) Transport out of the country; 3) The smelting process; 4) Technology component producers; and 5) Consumer companies that assemble the final product.
2. Annual or biannual auditing that will ensure that the process does not become corrupted again over time.
3. Third party auditors complete supply chain audits following a standardized process that does not differ from one business to the next or one mineral to another.

4. First hand inspections of key operational sites including mines of origin, transportation routes, trading centers and export points, and if possible, interviews with informants. For minerals to be deemed conflict free, we propose the following standards:
 - a. Mines should meet the following requirements: 1) Not under control of an illegitimate armed group; 2) Laborers are being compensated; 3) The health and well-being of laborers is not under threat and; 4) Government is aware of the mine and recognizes it as legitimate
 - b. Transport of minerals from mine to Comptiors should happen safely and without bribery.
 - c. Comptiors should be able to elucidate which minerals in their trading house came from which source.

There are also several organizations working on the conflict mineral issue. They have already made steps, independently of one another, toward developing certification or auditing process. We recommend involving the Industrial Technology Research Institute (ITRI), Extractive Industries Transparency Initiative (EITI), and Electronic Industry Citizenship Coalition (EICC) because these organizations will have the capability to assist in the implementation of the bill by acting as third party auditors and helping to establish legitimacy on the ground.

1. ITRI is already making progress on the ITRI Tin Supply Chain Initiative (iTSCi) to implement due diligence and cassiterite traceability. ITRI also works directly with the DRC ministry of mines and major coltan smelting companies, such as the Malaysia Smelting Corporation (MSC) and Thailand Smelting and Refining Co (Thaisarco).
2. EITI is currently in the process of certifying the DRC under EITI Validation so the country will adhere to EITI standards of good governance and transparency of their extractive industries sector.
3. EICC held meetings with industry representatives in 2009 to discuss responsible tantalum sourcing; has a code of conduct for global supply chains to improve the working and environmental conditions of their industry.