

MEMORANDUM

To: File

From: John Fieldsend
Special Counsel
Office of Rulemaking
Division of Corporation Finance
U.S. Securities and Exchange Commission

Date: October 4, 2011

Re: Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act Regarding Congolese Conflict Minerals

On October 4, 2011, Julie Davis of the Office of Legislative and Intergovernmental Affairs and Meredith Cross, Paula Dubberly, Felicia Kung, and John Fieldsend of the Division of Corporation Finance met in person with Chris Homan from the office of Senator Richard Durbin and Toby Whitney from the office of Representative Jim McDermott and telephonically with Karen Hayes of Pact. The participants discussed the Commission's required rulemaking in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which relates to reporting requirements regarding conflict minerals originating in the Democratic Republic of the Congo and adjoining countries. Attached to this memorandum is a document provided to the staff by the participants.

Attachment



Security Council

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**Letter dated 6 June 2011 from the Chair of the Security Council
Committee established pursuant to resolution 1533 (2004)
concerning the Democratic Republic of the Congo addressed to the
President of the Security Council**

On behalf of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo, and in accordance with paragraph 5 of Security Council resolution 1952 (2010), I have the honour to submit herewith the interim report of the Group of Experts on the Democratic Republic of the Congo.

In this connection, I would appreciate it if the present letter, together with its enclosure, were brought to the attention of the members of the Council and issued as a document of the Council.

(Signed) Maria Luiza Ribeiro Viotti
Chair



second round for the presidential elections, a move likely to favour the incumbent to the extent that the opposition vote is split.

20. The new Independent National Election Commission was inaugurated at the Supreme Court on 26 February 2011. The President of the Commission is Pastor Daniel Ngoy Mulunda (see S/2010/596, box 1). As voter registration proceeded across the country, the date of presidential and national legislative elections was set for 28 November 2011.

21. In Stuttgart, Germany, the trial of top leaders of the Forces démocratique pour la libération du Rwanda (FDLR), Ignace Murwanashyaka and Straton Musoni (the former designated for targeted sanctions since the inception of the sanctions list on 1 November 2005³ and the latter on 29 March 2007;⁴ see annex II) began on 4 May 2011, as the FDLR leaders in the Democratic Republic of the Congo gave mixed signals about their long-term intentions (see paras. 32-37 below).

22. Aside from FDLR, other foreign armed groups, namely the Lord's Resistance Army, the Allied Democratic Forces and the Forces nationales de libération, remained active in Orientale, North Kivu and South Kivu respectively, resisting continued military operations against them by the armed forces of the Democratic Republic of the Congo (Forces armées de la République démocratique du Congo, FARDC) (see paras. 28-31 and 39-40). Congolese armed groups also remained active, as efforts to integrate some of them into the armed forces drew mixed results (see paras. 41-59).

23. This report is issued in the context of debates regarding the extension of the mandate of MONUSCO — which expires on 30 June 2011, pursuant to resolution 1925 (2010) — with reference to agreed benchmarks established through a series of joint security assessments.

24. Two armed attacks on high-profile targets provoked speculation about their possible backers and intent: in Katanga, a raid on Lubumbashi airport on 4 February 2011; and, in Kinshasa, simultaneous attacks on the President's official residence and Camp Kokolo, an important military logistics base, on 27 February 2011. Diplomatic relations with the Republic of the Congo were strained as the Republic of the Congo refused subsequent extradition requests from the authorities of the Democratic Republic of the Congo, who were concerned that the assailants could have received support from dissident General Faustin Munene as well as other individuals in Brazzaville (see paras. 46-47).

25. On 3 May 2011, Angolan forces entered the territory of the Democratic Republic of the Congo during a military operation against the Front for the Liberation of the Enclave of Cabinda (*Frente para a Libertação do Enclave de Cabinda*, FLEC), an Angolan rebel group.

Minerals from the Democratic Republic of the Congo

26. On 10 March 2011 the Government of the Democratic Republic of the Congo lifted its suspension of all artisanal mining activity in North Kivu, South Kivu and

³ Press release of 1 November 2005; available from www.un.org/News/Press/docs/2005/sc8546.doc.htm.

⁴ Press release of 29 March 2007; available from www.un.org/News/Press/docs/2007/sc8987.doc.htm.

Maniema, which had been in place since 11 September 2010 (see paras. 67-68). Shortly afterwards, the primary remaining international buyer of tin concentrate from the Democratic Republic of the Congo and Rwanda, the Malaysia Smelting Corporation, communicated to its suppliers in both countries that, from 1 April 2011, they must comply with the tagging system of the ITRI⁵ Tin Supply Chain Initiative (see para. 80).

27. On 1 April 2011, section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act came into effect in the United States. This Act was signed into law on 21 July 2010, and includes provisions requiring companies publicly traded in the United States and purchasing gold, tin, tantalum and tungsten from the Democratic Republic of the Congo or its neighbours to submit an annual report outlining the due diligence measures they are taking with regard to whether those minerals are from conflict areas and, if so, whether they could have directly or indirectly financed or benefited armed groups.⁶ Since its development in 2010, this United States legislation has proved an important catalyst for traceability and certification initiatives and due diligence implementation in the minerals sector regionally and internationally.

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II. Foreign armed groups

A. Allied Democratic Forces

28. The Allied Democratic Forces (ADF) is a Ugandan-led Islamist rebel group based in the Rwenzori Mountains of North Kivu (see S/2010/596, sect. IV.C). The Uganda People's Defence Forces (UPDF) continue to advise the FARDC in ongoing operations against ADF. "Operation Rwenzori" was launched against ADF in June 2010 and has continued under the name "Operation Safisha Rwenzori". While ADF had been surprised by the initial phases of these operations, they have since adopted a proactive defence strategy conducting numerous ambushes on FARDC positions as well as periodically regaining control over previous strongholds. According to United Nations sources and ex-combatants, since a number of Congolese combatants deserted the group during 2010, ADF have sought to recruit more Ugandan citizens. According to MONUSCO and FARDC sources, the structure of ADF has remained intact, as described in annex 10 to the Group's final report of 2010 (S/2010/596). According to the demobilization, disarmament, repatriation, reintegration and resettlement section of MONUSCO, only 11 Ugandan ADF elements were repatriated during 2010.

29. Jamil Mukulu remains the leader of ADF (S/2010/596, para. 109). On 13 February 2011, the Ugandan authorities issued a Red Notice through INTERPOL for Mukulu's arrest and extradition on charges of terrorism (annex III). The Group will continue to monitor Mukulu's whereabouts in cooperation with immigration officials of the Democratic Republic of the Congo, Uganda and other States. In its final report, the Group intends to document the taxation by ADF of natural resources such as gold and timber and foreign financing through money transfers (S/2010/596, para. 112). Finally, the Group will also investigate indications of recruitment in third countries

⁵ The International Tin Research Institute, a tin industry membership organization; see www.itri.co.uk.

⁶ See www.sec.gov/spotlight/dodd-frank.shtml; see also paras. 83 and 84 below.