Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

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Section 1502 of the Dodd-Frank Wall Street Reform & Consumer Protection Act is the latest in a long line of misguided policies that purport to improve life on the African continent, but have the opposite effect in reality. The provision was attached to the mammoth financial regulatory reform bill passed in mid-2010, and its effects are already being felt. Section 1502 requires companies that use any of four statutorily-defined "conflict metals— tin, tantalum, tungsten, and gold— commonly used in everyday electronics to disclose whether they, or anyone along their supply chains, source their minerals from Congo or any of the countries that it borders. If the company determines that minerals in its product come from Congo, then it must post a "Conflict Minerals Report" on its website—essentially admitting that it may be funding strife in Africa.

The purpose behind this rule is laudable. The notice of proposed rule says that Congress believes the "exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo is helping to finance conflict characterized by extreme levels of violence…particularly sexual-and gender-based violence…" And to be sure, the level of violence in Congo is staggering. According to one study by the International Rescue Committee, more than *five million* people died as a result of conflict in Congo between 1998 and 2007. Another study suggests that more that 25% of women living in the eastern part of the country have been raped.

However, while the need to stop the strife is clear, Congress' solution in section 1502 not only does not solve the problem, it exacerbates it. Because the origin of the four "conflict

minerals" is almost impossible to trace, the rule effectively prevents companies from buying minerals for the region, thus preventing millions of independent miners in central Africa from earning a living. As the mineral trade weakens, warlords and government soldiers simply move on to other exported commodities, exploiting them for their own gain. For those reasons, the SEC should present an extended "phase-in" period, in the hopes that cooler minds in Washington will repeal the law in favor of a solution that will succeed in helping the people of central Africa.

## Section 1502's Effect on Companies

Under section 1502, if a company uses one of the four minerals *anywhere along its supply chain*, their SEC report must detail the steps it is taking to not "directly or indirectly finance or benefit armed groups" in Congo or adjoining countries. AT&T, which makes cell phones from tin and tantalum, clearly shows the problem this poses to businesses wanting to buy materials from central Africa. The company would have to sift through 35 manufacturers, 60 to 80 parts suppliers, more than 1,000 commodity-part suppliers, and an unknown number of brokers and distributors to determine the origin of the minerals in its products. Furthermore, even if AT&T were willing to attempt such a herculean task, determining the origin is not currently possible. According to Rick Goss, vice president of a tech-industry trade group, "There are no verifiably conflict-free sources from the Congo right now. There is too much chaos on the ground."

For those reasons, companies are rejecting *all* "conflict minerals" from the region, not just those that benefit the warlords. Instead, they buy the needed materials in Australia and China, pushing up prices for the minerals globally and leaving the people of Congo without a chance to earn a living.

Section 1502's Effect on Congo and Adjoining Countries

Sixteen percent of Congolese are independent miners and millions are dependent of the income it provides. Yet, in the aftermath of section 1502, mining of the "conflict minerals" have fallen more than 70%. In a country that ranks 119$^{h}$ out of 193 in gross domestic product, such a blow to one of the few steady industries is particularly crushing. For their part, the independent miners are puzzled by the government's rule. One mineral trader says: "It's not our fault. We follow the laws and we pay a tax. Out of that we are blamed [for] financing the war? I don't think it is true. People come to us with minerals and we buy."

Rep. Barney Frank, one of section 1502's sponsors, says that the purpose of the law "is to cut off funding to people who kill people." In truth, the warlords and government soldiers he is referring to are doing just fine. While money from minerals has plummeted, the "people who kill people" have moved to another target—the banana trade. As a Wall Street Journal editorial wryly observed "[p]erhaps conflict-free bananas will be the next object of activist enthusiasm." This brings to mind a game of "whack-a-mole" in which Congress clamps down of so-called "conflict minerals" only to have other goods exploited in its place. The point is that, while the warlords continue to prosper, the working independent miners are prevented from earning a living.

Meanwhile, the violence in Congo continues, with reports over the summer of government troops raping more than 100 women and children over three days in Congo's South Kivu region. Real reform must address the power of the warlords. Attempts from afar to solve the problem simply hurts the working Congolese while leaving those in power to commit further atrocities.

## Conclusion

In sum, this rule prevents American businesses from buying central African minerals, hurts working Congolese, and exacerbates, rather than helps, the problem of violence in the region. The SEC should wait to "phase-in" the rule in expectation of a Congressional repeal.

Sincerely,

Curtis Shank