

# Congress of the United States

Washington, DC 20510

November 17, 2011

The Honorable Mary Schapiro  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

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Office of Legislative and Intergovernmental Affairs

Dear Chairman Schapiro:

We write to you today to express our concerns with the U.S. Securities and Exchange Commission's (SEC) implementation of Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) which requires the SEC to promulgate rules requiring American companies to disclose use of conflict minerals from the Democratic Republic of the Congo (DRC). We appreciate the SEC's efforts to promulgate an effective and workable final rule, including extending the comment period to November 1, 2011, and holding a stakeholder forum on October 18, 2011.

As leaders and members of the Senate and House Small Business Committees, we are concerned that the initial Regulatory Flexibility Act (RFA) analysis in the SEC's proposed rule does not adequately consider the proposed rule's impact on small businesses, including the number of small businesses that will be affected and the actual compliance cost to these firms, as explained below.

The RFA requires agencies to take steps to collect input from small entities on regulations and to determine whether a rule is expected to have a significant economic impact on a substantial number of small entities. In general, an agency can avoid the RFA only if it can certify that the rule is not likely to have a "significant economic impact on a substantial number of small entities. The SEC must conduct a comprehensive RFA analysis to ensure that regulations associated with Sec. 1502 do not unfairly burden our nation's small businesses, particularly at a time of tremendous economic distress. Nonetheless, we have identified several issues with the SEC's preliminary RFA analysis.

First, it is unclear from the initial RFA analysis what data the SEC utilized to conclude that the proposed rule would affect a mere 793 small businesses at a total cost of \$46 million. According to industry estimates, the cost associated with this rule could reach the multi-billion dollar range. The difference between several billion dollars and \$46 million is significant enough to raise questions about whether the SEC's initial RFA analysis took into account all compliance costs on small businesses, including retailers, subcontractors, components manufacturers, and those embedded throughout the supply chain – not just those firms required to report to the SEC.

The true scope of Sec. 1502 compliance costs is significant for two specific reasons: (i) to determine the actual cost small businesses will bear as a result of the new rules, and (ii) to determine whether this proposal will result in a "major rule" that would have a significant economic impact on small entities which would warrant a final regulatory flexibility analysis. For those reasons, we respectfully request a letter explaining (i) how the SEC determined that the proposed rule would affect 793 small businesses at a total cost of \$46 million, and (ii) whether the SEC considered in its estimates small business that act as subcontractors for larger companies and other small entities in the supply chain.

Second, we are concerned that small companies may be unable to comply with the proposed rule for reasons outside of their control, namely because it may be impossible to trace some minerals from their point of extraction. While the U.S. Department of State (DOS) has created a map of "Conflict Zone Mines" as required under Sec. 1502, the DOS readily admits that, given the many limitations provided by available data, "this map does not provide sufficient information to serve as a substitute for information gathered by companies in order to exercise effective due diligence on their supply chains." Most small businesses lack resources to fully ascertain the origins of many components in the products they manufacture or sell and are relying on the DOS for proper "due diligence."

We echo the concerns communicated in the House Financial Services Committee letter dated July 28<sup>th</sup> to you, and urge the SEC to consider modifying the rule to allow a "*de minimis*" standard, as well as creating an "indeterminate origin" classification within the rule, at least for small businesses. These modifications would allow small companies to better comply with the regulation in an appropriate manner while fulfilling the legislative intent to curb the violence in the eastern DRC.

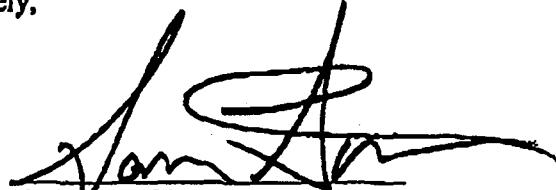
Furthermore, as the economy becomes increasingly globalized, the SEC must recognize that global supply chains are inherently tied to America's ability to maintain import-export growth. In light of this, we encourage the SEC to consider the Organisation for Economic Co-operation and Development's (OECD) *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* in providing guidance regarding due diligence rather than employing a bright-line approach to compliance, as proposed. Specifically, the OECD recognizes the challenges faced by companies in undertaking due diligence and promotes flexibility in compliance by companies.

We are aware that the SEC has received numerous comments on this rule, and appreciate the time spent to ensure that you carefully and fully look into the possible effects of this proposed regulation. The U.S. economy is still recovering and we all must be careful to ensure that nothing hinders this recovery, while simultaneously being mindful of the critical nature of this provision in working to prevent and eradicate the atrocities that occur in the DRC and neighboring countries. We look forward to receiving your response by December 15, 2011.

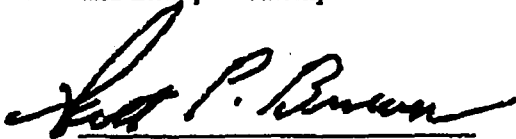
Sincerely,



**OLYMPIA J. SNOWE**  
Ranking Member  
U.S. Senate Committee on Small Business  
and Entrepreneurship



**SAM GRAVES**  
Chair  
U.S. House Committee on Small Business



**SCOTT P. BROWN**  
Member  
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**ROSCOE BARTLETT**  
Member  
U.S. House Committee on Small Business



**SCOTT TIPTON**  
Member  
U.S. House Committee on Small Business



**JOE WALSH**  
Member  
U.S. House Committee on Small Business

- CC: The Honorable Elisse B. Walter, Commissioner
- CC: The Honorable Luis A. Aguilar, Commissioner
- CC: The Honorable Troy A. Paredes, Commissioner
- CC: The Honorable Daniel M. Gallagher, Commissioner