

December 22, 2011

By E-mail

Chairman Mary L. Schapiro
Commissioner Luis Aguilar
Commissioner Elisse Walter
Commissioner Daniel Gallagher
Commissioner Troy Paredes

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Dear Chairman and Commissioners,

We, the undersigned civil society organizations, submit this letter to express our serious concern with the long delays in the issuance of the final rule for Section 1502 of the Dodd-Frank Act. We strongly urge the Securities and Exchange Commission (Commission) and the Chairman, to expedite the rulemaking process and to issue the final rules at the earliest opportunity, and no later than the end of January, 2012. Failure to release the final rules soon harms investors, issuers, taxpayers, and threatens to undermine progress on the ground in eastern Democratic Republic of Congo (DRC) in a way which could exacerbate the humanitarian crisis and risks to investors that the legislation was meant to address.

Congress intended for this law to immediately address the urgent investor risk and the humanitarian situation in the eastern Democratic Republic of Congo (DRC) by curbing the trade in conflict minerals that funds armed groups. The statutory language of Section 1502 made clear that the final rules were to be issued no later than 270 days after the date of enactment of the subsection, which meant that the final rules were to be released around April 2011. We are now at the end of December, 2011 and the final rules have yet to be released.

The statutory language went on to state that disclosures begin “with the person’s first full fiscal year that begins after the date of promulgation of such regulations...” Therefore, if, for example, an issuer starts their fiscal year on January 1, 2012 and the rules are not released until mid-January, the issuer will not face a reporting burden until the 2013 reporting period. This, in effect, creates a significant delay in the reporting requirements of the legislation. With this in mind, we urge the Commission not to include in its final rule any delays, phase-ins or tiered disclosure regimes. In addition to the substantial de facto delay already introduced by the very late release of the regulations, any such delays, phase-ins or tiered disclosure would clearly go against the statutory intent to address urgent risks to investors and to the people in the eastern DRC.

With respect to the impact the timing and content of the final rule will have on the situation in eastern Congo, we draw your attention to the October 2011 submission by the United Nations Group of Experts on the DRC. The Group states that “requiring companies to exercise due diligence is effective. The Group's investigations in the DRC have shown that private sector purchasing power and due diligence implementation is reducing conflict financing, promoting good governance in the DRC mining sector, and preserving access to international markets for impoverished artisanal miners. It is worth recalling here that artisanal miners are among the prime sources of recruitment for armed groups in the DRC... The second point is that since the signing into law of the Dodd Frank act, a higher proportion than before of tin, tungsten and tantalum mined in the DRC is not funding conflict.”

The SEC’s failure to release the final rules threatens this progress. For companies and in-region actors seeking to establish systems that will allow them to sell their minerals to issuers subject to Section 1502, delays create uncertainty. This uncertainty is hindering progress in companies’ development of due diligence processes and systems that can enable them to source minerals from the DRC countries responsibly. Moreover, the deadly trade in conflict minerals, which Section 1502 is designed to address, is one of the reasons why US taxpayers are continuing to pay US \$500-600 million per year in aid and peacekeeping costs aimed at making Congo a more stable place. For investors, the right to know what activities their investments or purchases may be directly or indirectly supporting is compromised. Most importantly, for the Congolese people, further delays mean armed groups can continue for longer to prey upon and draw financing from the minerals sector, while fuelling instability and committing human rights abuses against civilian populations. This is not what Congress intended by enacting Section 1502, and the Commission and the Chairman, through continuing to delay the issuance of the final rule, risk undermining the intent behind the law.

We strongly urge the Commission and the Chairman to expedite the rulemaking process and to issue the final rules at the earliest opportunity, and no later than the end of January, 2012. We would appreciate an opportunity to meet with you to discuss the delays in issuing the rules, and to ascertain a specific date when we can expect a final rule to be released.

Yours sincerely,

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John Bradshaw
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