Congress of the United States
Washington, DC 20515

February 16, 2012

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

Dear Chairman Schapiro:

First, we want to thank the Commission and Staff for their diligent work on finalizing the rule for Section 1502 of the Dodd-Frank Wall Street Reform Act concerning conflict minerals.

We are very concerned about the outlines of the final rule, in particular, that the Commission will approve a rule that contravenes Congress's legislative intent and does not require the Conflict Mineral Reports to be "filed," but instead allows them to be "furnished."

The Commission's misreading of legislative history and congressional intent were made clear in meetings with the SEC and the alarming report of June 13, 2011 by the SEC Inspector General stating that SEC staff had determined the transparency provisions of Section 1502 did not protect investors (p. 38). It was made clear during the legislative process, meetings with the SEC, and in written comments to the Commission that Section 1502 was designed as a transparency measure to provide investors and the public the information needed to make informed choices.

Accountability in the reporting of conflict minerals is critical to both investors and to capital formation – this is well documented in comments on Section 1502 by investment companies, investment advisors, and thousands of individual investors. Even beyond the submissions, it seems abundantly clear that when a publicly traded company relies on an unstable black market for inputs essential to manufacturing its products it is of deep material interest to investors. Protecting investor interests by making companies liable for fraudulent or false reporting of conflict minerals is critical -- so the reports must be "filed," not "furnished."

Additionally, the filed reports should contain enough substantive information so that investors and the public can understand what actions a company has taken to make a reasonable country of origin inquiry. Reports that do not clearly list a company's activities and rules allowing a category of "indeterminate" would undermine congressional intent.

The need to adhere to congressional intent was further emphasized in the recently passed FY 2012 Omnibus Appropriations measure's Financial Services Explanatory Statement (based on Senate Report 112-79):

> *"The Committee remains concerned that American investors may be unwittingly investing in companies ... linked to human rights violations. The Committee believes that a company's association with sponsors of terrorism and human rights abuses...can have a materially adverse result on a public company's operations, financial condition, earnings, and stock prices, all of which can negatively affect the value of an investment.*
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> *...[T]he human rights and sexual violence problems plaguing mineral rich Democratic Republic of Congo are long standing and well known. Industries using key minerals from this region have been aware of the problem and a number have already taken laudable steps to ensure their sourcing of minerals avoids fueling further violence.* ***The Committee expects the clear congressional intent of section 1502 of the Dodd-Frank Act to be implemented in a timely manner."***

In addition to the issues of divergence from congressional intent, we are also concerned about the economic cost estimate contained in the final rule. The Commission's estimate should only rely on those submitted estimates that use credible and publicly cited data, methodologies that rely on practices of companies in the field, and comparisons to costs of truly similar regulations.

Finally, we are heartened that the law has started to have its intended effects—the black market is being curtailed, there is now transparent mining at considerable scale, militia disengagement has accelerated, overall violence has abated, and investors and consumers are getting better informed. Proactive companies have found that understanding their supply chains is manageable and considerably less complex and less expensive than they first projected.

Despite positive change on the ground, the lack of final regulations from the SEC is having negative consequences. The SEC's inaction is undermining the policy goals of the law. It has slowed the establishment of transparent supply chains as good actors hesitate, helped allow some smuggling to take hold, and caused unnecessary hardship to the people of Central Africa.

In addition to the need to follow congressional intent, it is critically important the SEC quickly finalize the rule. With a strong final rule companies will become more comfortable engaging, investors will have the accountability essential to sound capital formation, the smuggling that has emerged will become less economically viable, and the people of Central Africa will benefit from further reduced violence and increased economic opportunities.

Thank you for your continued attention to this matter.

Sincerely,

Patrick J. Leahy
United States Senator

Howard L. Berman
Member of Congress

Christopher A. Coons
United States Senator

Jim McDermott
Member of Congress

Donald M. Payne
Member of Congress

Gregory W. Meeks
Member of Congress

Karen Bass
Member of Congress