



Comments by the Secretariat of the International Conference of the Great Lakes Region (ICGLR) on Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Introduction

These comments on Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection act are submitted on behalf of the International Conference of the Great Lakes Region (ICGLR) in response to the request of the Securities and Exchange Commission.

The ICGLR is an 11-member intergovernmental organisation including the DRC and all of its neighbours, plus Kenya. The ICGLR is the regional African governmental body most directly concerned with the issue of conflict minerals. The Executive Secretariat of the ICGLR is headquartered in Bujumbura, Burundi. The Secretariat serves as the technical and coordinating body of the ICGLR.

The ICGLR is currently working to implement a mineral tracking and certification scheme for conflict minerals for the 11 nations of the Great Lakes Region. The ICGLR mineral tracking and certification scheme will include full mineral tracking from mine to point of export, independent third party auditing, and full public disclosure of mineral flows and audits.

For further information on the ICGLR and its mineral tracking and certification scheme, please see 'Background' below.

Specific comments on sections of the Dodd-Frank Act follow.

General Comments

The ICLGR supports the US Dodd-Frank Wall Street Reform and Consumer Protection Act, and the efforts of the US government to assist the governments and institutions of the Great Lakes Region in eliminating conflict minerals and the financing of armed groups.

Specific Comments

1. Mining Issuers as “Manufacturing” Issuers

The ICGLR supports the position that mining issuers should be considered to be manufacturing conflict minerals when they extract those minerals. The full reporting requirements of Section 1502 should thus apply.

In the context of the ICGLR region, there are in addition to mining issuers, also numerous mineral aggregators and mineral processors, who purchase mineral ore from small mining producers and process the ore to increase its mineral content. Some of these mineral re-processors are owned by reporting companies, or partially owned by reporting companies, or have long term supply contracts with reporting



companies. In these cases, the reporting company that owns, or partially owns, or has a long term supply contract with these small mineral processors, should be considered to be contracting the manufacture of conflict minerals, and thus subject to the reporting requirements of Section 1502.

2. “C. Step Two—Determining Whether Conflict Minerals Originated in the DRC Countries and the Resulting Disclosure”

The ICGLR believes that the Commission should put in place rules requiring a reporting company to conduct a sufficiently detailed and rigorous inquiry so as to be able to state on reasonable grounds that necessary conflict minerals did or did not originate in the DRC or neighbouring country.

In cases where the reporting company claims that necessary conflict minerals did not originate in the DRC or its neighbours, the Commission should require the reporting company to disclose the information sustaining this assertion, as part of its annual report or other reporting to the Commission, or in a readily accessible location on the reporting company’s website. The information should remain available for a period of five years.

The ICGLR believes the Commission should provide guidance to reporting companies as to what constitutes a sufficiently detailed and rigorous inquiry. At a minimum, a reporting company should have obtained written positive assurances from all of its suppliers that the necessary conflict minerals supplied directly to the reporting company, or used in components supplied to the reporting company, did not originate in the DRC or its neighbours. As noted in the paragraph above, the names of these suppliers, and the details of their assurances, should be made available to investors and the public.

3. “D. Step Three—Conflict Minerals Report’s Content and Supply Chain Due Diligence”

“40. Should our rules require issuers to disclose the mine or location of origin of their conflict minerals with the greatest possible specificity in addition to requiring issuers, as proposed, to describe the efforts to determine the mine or location of origin with the greatest possible specificity? If so, how should we prescribe how the location is described?”

The ICGLR believes that allowing issuers to simply describe the efforts to determine the mine or location of origin with the greatest possible specificity is insufficient. The Commission should require issuers to describe in the Conflict Minerals Report the mine or location of origin of their conflict minerals, with the greatest possible specificity. Our ability to do this is improving.



With the chain of custody systems currently in place and working in the ICGLR region, it is a straightforward task to track minerals from the smelter (normally located outside the ICGLR region) all the way down through various middlemen and processors (the latter often located in the region) to the level of the comptoir or mineral buying house. These are located in larger cities in the mining (and conflict) zones.

Thus, at a very minimum, with current procedures and technologies, the Conflict Minerals Report should include a mineral supply chain map or supply chain schematic showing the reporting company's supply chain, from the company, down through component suppliers, smelters, and ore processors to the buying house. This schematic should contain the names or corporate identities of all these actors along the supply chain.

With technologies currently being tested, it should soon be possible to track minerals from the comptoir or buying house up to the individual mine site. As these technologies and processes come on line, the supply chain schematic should be extended to include this information.

Finally, the ICGLR believes that the Commission should require, as part of a reporting company's due diligence, that the Conflict Minerals Report contain a risk assessment looking specifically at the dangers of conflict and conflict financing likely or possible in the areas where (as identified by the supply chain schematic) the reporting company is sourcing conflict minerals. Given that it is currently possible to track minerals to the comptoir (buying house), and the general area where comptoirs purchase their minerals in known, this risk assessment can and should be quite geographically specific. (As technology improves and the tracking gets better, the risk assessment will become ever more targeted).

“42. We are proposing that an issuer “certify the audit” by certifying that it obtained such an audit. Should we further specify the nature of the certification?”

The ICGLR believe that the provision for independent private sector audits is one of the most important elements in the Dodd-Frank Act (as independent third party audits are also in the ICGLR's own mineral tracking and certification scheme). The ICGLR therefore urges that the Commission take particular care with regard to the design and wording of this aspect of the regulations.

In particular, the ICGLR urges that the Commission itself delineate specific requirements for the accreditation and selection of auditors, in order to guarantee their competence and independence. The requirements for auditor accreditation and independence are well understood; the Commission can make reference to the international standards set out in ISO 17021 (Requirements for bodies providing audit and certification of management systems); the Commission may also want to refer to one of the more practical accreditation standards as implemented by one of the



international certification schemes currently in operation, such as those of the Forestry Stewardship Council (FSC).

Furthermore, the ICGLR strongly recommends that the Commission include requirements regarding the content of the independent private sector audits, as well as the procedures to be followed by auditors. Specifically, the Commission should require auditors to conduct site visits, including site visits to the producing regions of the DRC and its neighbours, in order to double check and “ground truth” the information and assertions made in the Conflict Minerals Report. If the Conflict Mineral Report contains a supply chain map or schematic as recommended above, the auditor should verify it. If the Conflict Mineral Report contains a conflict risk assessment for the area of mineral sourcing (or mine site), the auditor should visit the area and ground truth that risk assessment.

The preceding four paragraphs go to point 42 (above). “Certify the audit” in this sense would mean that the issuer was certifying that it had engaged an independent private sector auditor according to the standards set out by the Commission, and that the issuer further certified that the auditor had performed the audit according to the standards and procedures set out by the Commission.

“43. Should our rules, as proposed, require an issuer to furnish its independent private sector audit report as part of its Conflict Minerals Report?”

The ICGLR strongly urges that reporting companies be required to disclose the full contents of private sector auditor reports to investors and the public. The reporting company should be required to submit the auditor’s report to the Commission, and to make the audit report available on its website, along with the Conflict Minerals Report and other investor information such as annual reports. Auditor reports should be available for a period of five years.

The ICGLR takes this opportunity to thank the Commission for the opportunity to provide commentary.

Your Sincerely,

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Background

The ICGLR – International Conference of the Great Lakes Region

The ICGLR is an 11-member intergovernmental organisation including the DRC and all of its neighbours, plus Kenya. The ICGLR is the regional African governmental body most directly concerned with the issue of conflict minerals.

The ICGLR came into being in November, 2004, when 11 African heads of state¹ met in Dar Es Salaam under the auspices of the African Union and the United Nations, and declared their determination to transform the Great Lakes from a region of endemic conflict and insecurity into a region ‘of sustainable peace and security for States and peoples’, a space ‘of political and social stability, shared growth and development’².

The heads of state met again on December 15, 2006, and adopted the Pact on Peace, Stability and Development in the Great Lakes Region. The Pact is intended to provide a legal framework governing relations between the Member States, and create the conditions for security, stability and sustainable development between the Member States. A legally binding document, the Pact entered into force on June 21, 2008.

The Pact contains 10 protocols, but the key one for the purposes of mineral tracking and certification is the Protocol Against the Illegal Exploitation of Natural Resources (the ‘Protocol’)³.

The Protocol forms the legal foundation upon which efforts to establish mineral tracking and certification in the Great Lakes region are being built. The 37 Articles of the Protocol require, among other things, that Member States cooperate in the fight against the illegal exploitation of natural resources, protect of human rights, criminalize both the illegal exploitation of natural resources and the laundering of the proceeds of illegal natural resource exploitation, and put an end to impunity for entities and individuals found guilty of such exploitation.

The Protocol calls for Member States to take preventive measures, specifically the creation of a Mechanism for the Certification of Natural Resources from the region. The ICGLR has been actively working to bring this certification system into being.

On April 12-15, 2010, the Steering Committee of the ICGLR met in Bujumbura, Burundi and adopted the four main structural elements of the proposed Mineral Tracking and Certification Scheme, as part of the ICLGR’s Regional Initiative on

¹ The ICGLR member countries are Angola, Burundi, Central African Republic, Democratic Republic of the Congo, Kenya, Republic of Congo, Rwanda, Sudan, Tanzania, Uganda and Zambia.

² *Dar Es Salaam Declaration on Peace, Democracy and Development in the Great Lakes Region*, First Summit of Heads of State and Government, Dar Es Salaam, 19-20 November, 2004.

³ Pact, Protocol and other key documents available for download on the ICGLR website: www.icglr.org.



Natural Resources (RINR). On September 30, 2010 the RINR and its Certification and Tracking Scheme were in turn approved by a conference of the ICLGR mining ministers in Nairobi. On December 15, 2010 the ICLGR heads of state in Lusaka and formally adopted the RINR, including the Mineral Tracking and Certification Scheme, as noted in the Lusaka Declaration. The ICGLR is thus now fully committed to bringing a regional tracking and certification scheme into being.

The four structural elements of the scheme are as follows:

1. mineral tracking from mine site to point of export
2. data on regional mineral flows transmitted to a central ICGLR database, which then analyses mineral flows looking for imbalances between production and sales, or purchases and exports, etc
3. independent third party auditing to a regional standard, with auditors and auditing standards managed by a committee with multi-sector representation (i.e. government, industry, civil society)
4. an overall investigator, or mineral chain auditor, to look for anomalies, discrepancies, fraud, smuggling or signs of more complex conflict financing