S7-40-10

VIASYSTEMS

David M. Sindelar
Chief Executive Officer

August 9, 2012

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

Re: Proposed Rules on Conflict Minerals Release No. 34-063547; File No. S7-40-10, RIN 3235-AK84

Dear Chairman Schapiro:

We support the fundamental goal of preventing the exploitation of minerals for the purpose of funding human rights violations within the Democratic Republic of the Congo (DRC). In fact, on May 9, 2012, the House Financial Services Committee Subcommittee on International Monetary Policy and Trade held a hearing entitled, *Costs and Consequences of Dodd-Frank Section 1502: Impacts on America and the Congo*. The Subcommittee's hearing was the first Congressional hearing ever held on the language to create a corporate disclosure regime for minerals mined in the Congo. At the hearing, Republican and Democratic Members of Congress expressed concern that, if poorly implemented, Section 1502 could cost American companies billions of dollars and may result in a de facto embargo on minerals mined in the Congo, leaving many legitimate miners without means to provide for their families.

During the hearing, we were alarmed to hear estimates that the possible compliance costs of the proposed regulations implementing Section 1502 could run between $8 billion and $16 billion, but that the SEC had only estimated the costs would be $71 million. We find this disparity in cost estimates to be especially disturbing since this suggests that the SEC has failed to correct the procedural flaws that have led courts to strike down SEC rulemakings, most recently in *Business Roundtable and U.S. Chamber of Commerce v. Securities and Exchange Commission*. We were also surprised to learn that while two-thirds of those costs could be borne by small businesses, the SEC failed to assess those impacts as required by the *Regulatory Flexibility Act* and the *Small Business Regulatory Enforcement and Fairness Act* (SBREFA).[1]

[1] While the SEC estimates that between 1,199 and 5,551 public companies will be impacted by this rule, one public company could have as many as 100,000 vendors who are small businesses. Therefore, the number of businesses impacted could be well over one million.

Overly burdensome regulations could make the cost of compliance with Section 1502 outweigh the benefits, and decrease company incentives to source conflict-free minerals from the Eastern Democratic Republic of the Congo (DRC). The SEC's regulations should not expand the scope of Section 1502 beyond the boundaries established by this flawed statute. The breadth of Section 1502 is already vast. The four minerals that will be regulated -- tin, tantalum, tungsten and gold -- are used in everyday goods like tin cans, light bulbs, ballpoint pens, and sewing thread. Thousands of companies will bear the cost of implementing Section 1502, and the Congolese people will face further economic hardship if companies are not able to access these minerals. Furthermore, if the SEC broadens the scope of issuers by requiring companies that "contract to manufacture" to comply with the law, or if recycled materials are not excluded from the reporting requirements, countless more companies will be affected. We do not believe that imposing a reporting burden on the broadest cross-section of U.S. companies regulated by the SEC, and their entire supply chains, is an effective or efficient tool for ending these human rights abuses, which is presumably why the authors of the statute did not include such a requirement.

In implementing Section 1502, we also believe the SEC should be mindful of its mission to protect investors and promote capital formation and efficient U.S. financial markets and adopt rules that limit costs and adverse consequences to U.S. companies. To achieve these goals, we urge the SEC to conduct a SBREFA review of the small business impacts of any proposed regulations and ensure the regulation minimizes or eliminates unnecessary costs and burdens upon small businesses. In addition, we urge the SEC to include a safe harbor that allows public companies to exercise reasonable due diligence and provide measures to reduce potential liability for public companies.

We recognize the challenge you face in implementing a hastily crafted provision that was slipped into a 2,315-page bill on the final night of deliberations by a House-Senate Conference Committee on a complex subject matter beyond the SEC's normal area of expertise. Congress did not have hearings to consider how Section 1502 would be implemented, whether it would help end the conflict in the DRC, and what its effects would be on the Congolese people, on the companies that use these minerals to manufacture goods used by consumers and other manufacturers, or on the broader economy.

Companies complain that the compliance burden of Section 1502 discourages them from buying even conflict-free minerals from the DRC, because sourcing from the region could automatically trigger an expensive SEC report. The proposed Rule requires companies to file a report, even when they source minerals from certified conflict-free mines in the DRC. As a result, companies have concluded it will be less expensive to source minerals from other areas of the world, creating a *de facto* embargo on DRC minerals even before the SEC has finalized its rules. Inflexible and expensive SEC rules could remove future incentives to invest in conflict-free minerals from the Kivus and could also deprive the area of much-needed economic development.

While the legislative process was seriously flawed, it is critical that you are deliberate and careful in crafting regulations to implement Section 1502 so the Rule does not have further unintended negative consequences on American companies or the people of the Congo. We believe that this can be achieved through the measures outlined in this letter. Thank you for your careful approach to this sensitive and important matter.

Sincerely,

David M. Sindelar