

February 21, 2011

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

RE: Proposed Rules for Implementation of Conflict Minerals Provision in Dodd-Frank Wall Street Reform and Consumer Protection Act (File No. S7-40-10)

Dear Chairman Shapiro,

I am writing to share my comments on the proposed rules to implement Section 502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. I applaud the Commission's efforts to develop thoughtful and effective rules to implement this important piece of legislation. I support an expansion of the scope of the rules and encourage a rigorous enforcement.

As you are aware, Section 502 was enacted in response to public concern over the ongoing and unrelenting violence in the Democratic Republic of Congo and surrounding countries. Reflecting this concern, Congress authorized a mechanism to ensure transparency and accountability for those who seek to benefit from mineral exports from that region. Those exports are a major source of funding and wealth for those who engage in violence against civilians. In order to give effect to this purpose, it is imperative that the SEC adopt rules that give consumers the information they need to exert grassroots economic pressure on companies who earn profits from the use of those minerals. Giving consumers this information will fulfill the intent and purpose of Congress.

With these purposes in mind, I believe the proposed rules are in need of some strengthening, and should be rigorously enforced. Specifically, I wish to express my support for three step process described in the rules; but I encourage the Commission to strengthen Step One by making it apply to the broadest group possible, and I support the strongest possible interpretation and enforcement of Steps two and three:

A. Step One - Who should be subject to the rules?

1. Issuers That File Reports Under the Exchange Act: I support the Commission's decision to apply the rules to all companies that file reports under the Exchange Act with no exceptions. Further, I recommend that any company that is not required to file under the Exchange Act, but that that derives a substantial portion of their revenue from conflict minerals, to be similarly included. By including these additional companies, the SEC can avoid a potentially serious loophole.

2. “Manufacture” and “Contract To Manufacture” Products: In keeping with the recommendation of the unnamed NGO, the Commission should define “manufacture” and “contract to manufacture” as broadly as practicable to ensure companies who derive substantial profits from conflict minerals do not escape the reporting requirements.

3. Mining Issuers as “Manufacturing” Issuers: Mining Issuers should be defined as manufacturing issuers so that reporting is required throughout the supply chain.

4. When Conflict Minerals are “Necessary” to a Product: Any use of conflict minerals, whether strictly necessary, decorative, or superfluous, should be included. This will ensure the purpose of the provision is fully realized.

B. Step Two—Determining Whether Conflict Minerals Originated in the DRC Countries and the Resulting Disclosure

1. The Commissions proposed rules for this step seem sensible and adequate. Without placing too costly a burden on companies, the proposed rules will ensure that consumers have the information they need to apply economic pressure to offending companies.

C. Step Three—Conflict Minerals Report's Content and Supply Chain Due Diligence

1. Again, the Commission’s proposed rules seem sensible. I encourage the Commission, however, to investigate and enforce the independence of the private sector audits required under the rules. If the Conflict Minerals Provision is to achieve its goals, those audits must be reliable, independent, and thorough. Otherwise, the audits will serve only to white-wash the complicity of the offending companies.

In sum, I applaud the Commission’s efforts to give effect to Congress’ laudable passage of the Conflict Minerals Provision in the Dodd-Frank Act. By expanding the scope of who these rules apply to and ensuring adequate enforcement, the Commission can play an important role in ending the violence against civilians in the DRC countries.

Sincerely,

Reid Rector
Georgetown University Law Center
Class of 2013