



RESPONSIBLE TRADE, LLC. Helping companies responsibly manage their supply chains.

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Michael S. Piwowar
Acting Chairman
United States Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549
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Dear Acting Chairman Piwowar,

I write in response to your call for comments on the reconsideration of the U.S. Securities and Exchange Commission's Conflict Minerals Rule, which was launched on January 31, 2017.

Having just returned last week from the Democratic Republic of the Congo (DRC) where I met with civil society representatives and exporters of the regulated minerals, I would like to share with you my perspective "from the ground" on why it is crucial for the rule to remain in force.

Prior to sharing my comments, allow me to briefly introduce my experience and expertise in the field of conflict minerals. As President of Responsible Trade LLC, I currently am helping companies responsibly manage their supply chains by supporting them in areas like supply chain due diligence, capacity building and audits. Clients include industry members comprising mine site owners, metal processors and downstream companies and leading civil society organizations working in the DRC. Over the last decade, I served in multiple leadership positions in several international conflict minerals initiatives including the Public Private Alliance for Responsible Minerals Trade (PPA) and the Conflict Free Sourcing Initiative (CFSI). In my prior position, I was responsible for the development and implementation of Motorola Solutions, Inc.'s Conflict Minerals Program, which was recognized as an industry leading program. I also participated in numerous meetings with U.S. Government officials including the SEC, U.S. Department of State, U.S. Agency for International Development, and the congressional leaders who sponsored Section 1502 of Dodd Frank. Furthermore, I contributed to the development of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and served as the industry representative on the OECD's Multi-Stakeholder Steering Group. Currently, I serve on the International Conference of the Great Lakes Region's (ICGLR) Audit Committee as an International Industry representative. Over the past years, I have been to mine sites and trading houses in the DRC, Rwanda and Uganda numerous times. I helped establish the Solutions for Hope Platform that led to the first verified conflict-free tantalum from the DRC in July 2011; supported the Conflict Free Tin Initiative that allowed tin from South Kivu to enter the market in October 2012, and the initiation of the first verified conflict-free tantalum shipments from North Kivu after the M23 surrendered in early 2014. I therefore possess an excellent understanding of the conflict



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minerals challenge and related developments as well as how regulation has impacted stakeholder efforts across the supply chain to tackle the issue.

On a general level, it is my opinion that the rule has had a positive rather than a negative effect. Besides raising global awareness of the human rights violations linked to conflict financing and the illegal exploitation of conflict minerals by armed groups, the rule has provided appropriate regulatory support for responsible sourcing programs in the DRC and the Great Lakes Region. To date, responsible sourcing programs supported by the rule have reduced the amount of conflict financing, specifically in the 3T (tin, tantalum and tungsten) trade, while increasing the amount of verified conflict-free 3T entering the global market. The rule also set an important regulatory standard for other regions as evident in the recent EU conflict minerals regulation.

Regarding the key topics raised by your consultation, I would first like to address the issue of the perceived lack of investor interest. Several of the submitted consultation responses indicate that the rule is of no interest to investors. This certainly is not the case. As investors increasingly move toward an approach based on Environmental, Social and Governance (ESG) risks, they are paying greater attention to conflict-free sourcing. For example, Parnassus Investments Core Equity (PRBLX) – one of the largest socially responsible mutual funds with more than \$10 billion in value – was quick to recognize the conflict minerals efforts of a leading electronics manufacturer. The top mutual fund holder for Motorola Solutions¹, Parnassus, invested 3.2 percent of its holdings (more than \$320 million) in Motorola Solutions after taking into account the company's early commitment to sourcing "conflict-free" tantalum².

Secondly, it is important to realize that a suspension of the rule could jeopardize the global availability of tantalum given that as much as 40 percent of its mine production comes from the Covered Countries³. Tantalum is an essential and strategic mineral used by many industry sectors in the U.S., which rely on the mineral to manufacture their products or product parts. U.S.-based companies from the technology, aerospace, healthcare and defence industry sectors, which are so critical to our country's national security, could therefore negatively be impacted by the rule's suspension.

Thirdly, there are many references to "progress on the ground" in the Covered Countries and specifically in the DRC as a result of the rule's implementation. I would like to emphasize that this progress is real. Many stakeholders I spoke to during my recent trip to the DRC indicated that suspending the rule would be detrimental to the local mining industry and create greater instability. While not perfect, many of the responsible sourcing programs (iTSCi, Better Sourcing Program, CFSI, and ICGLR RCM) that have been put in place currently are maturing and improving conditions on the ground. The number of mines that are designated as "green" or "conflict-free" is increasing while the capacity of local stakeholders and government agencies is growing. You stated that our country's "withdrawal from the region may undermine U.S. national security interests by creating a vacuum filled by those with less benign

¹ <https://finance.yahoo.com/quote/MSI/holders?p=MSI>

² <http://www.barrons.com/articles/SB51885783724964273656104580136401822702186>

³ <https://pubs.usgs.gov/fs/2014/3122/pdf/fs20143122.pdf>



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interests.” I would argue that by weakening or suspending the rule, it would create uncertainty, increase risks of sourcing illegitimate material from the region, possibly invite a boycott and create a vacuum that does not exist today.

Fourthly, in your request for comments you stated that the disclosure requirements created “a de facto boycott of minerals from portions of Africa.” I would like to point out that this boycott actually was initiated by the DRC government, namely, the DRC presidential suspension of mining in the Eastern part of the country in September 2010. I witnessed this first hand as I was in Bukavu and Goma, DRC visiting government officials, civil society leaders, a mine, and exporters at that time. The exporter’s operations essentially were shut down due to lack of material caused by the suspension. Additionally, at the time, no controls or OECD Due Diligence compliant systems were in place (ITSCI was just beginning its pilot when the suspension put an end to the pilot) that would allow for the verification of conflict-free status of minerals that is necessary for its market access. Since then, several in-region programs that validate and track the minerals have been implemented. These in-region assurance systems along with the Conflict Free Smelter Program enable access to global markets for minerals from the region. As these programs are extremely successful and continue to grow, they are enabling continuous sourcing and are working to prevent a boycott in the region. A suspension of the rule would jeopardize the viability of the programs and make responsible sourcing almost impossible, thus possibly creating a boycott.

Finally, there is a need for the SEC to provide additional guidance to companies on how to comply with the rule. Many issues and concerns have been raised, specifically in relation to product determinations, independent private sector audits and what information should be included in conflict minerals disclosures due to the court decision and expiration of the temporary period.

The 2014 Order Issuing Stay suspended the requirement for issuers to use specific product determination language while the guidance suspended the trigger for the Independent Private Sector Audit (IPSA) unless a DRC conflict-free product determination was made. Issuers therefore had the option of using alternative language or remaining silent in their product determination. Guidance is needed on how issuers can characterize their products that is consistent with the court decision. The SEC therefore should consider incorporating product determination language that allows for uncertainty given the complex and dynamic nature of many supply chains for companies implementing reasonable due diligence.

In addition, it is important that the SEC does not sanction companies for making a conflict-free product claim. While the SEC guidance only requires an IPSA of companies that make a conflict-free product claim, research has shown that many companies submitting conflict minerals disclosures have failed basic plausibility tests concerning 3TG Country of Origin (COO) and the 3TG Smelter or Refiner (SOR) countries in their annual reporting in 2016⁴. More than 250 companies (and 4 of the 19 companies that had an IPSA) have cited countries as the source of their 3TGs that are unlikely to be the actual source. These findings illustrate the fact that the two IPSA objectives on the rule do not consider the accuracy of the content and the conclusions. For this reason, the SEC should either consider modifying the IPSA requirements (to verify the reasonableness of the conclusions and require all Conflict Mineral Reports to

⁴ <http://responsibletradellc.com/index.php/2016/09/27/many-companies-conflict-mineral-disclosures-list-implausible-coo-and-sor-countries>



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be subject to an IPSA) or suspend the IPSA requirement altogether as it is a costly, non-value added element as it currently exists.

Section 1502 has provided appropriate regulatory support for responsible sourcing programs in the DRC and the Great Lakes Region. To date, responsible sourcing programs supported by Section 1502 have reduced the amount of conflict financing, specifically in the 3T (tin, tantalum and tungsten) trade, while increasing the amount of verified conflict-free 3T entering the global market. The rule should therefore not be radically altered or suspended.

I would welcome the opportunity to discuss my comments with you further. Please do not hesitate to contact me should you require any clarification or further information.

Yours sincerely,

Michael Loch
President
Responsible Trade LLC.

