March 21, 2017

Michael S. Piwowar
Acting Chairman
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

RE: Comments on Reconsideration of Dodd-Frank Section 1502, The Conflict Minerals Rule

Acting Chairman Piwowar:

The National Association of Electrical Distributors (NAED) strongly encourages The Securities and Exchange Commission to reduce the burden of Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), commonly referred to as the conflict minerals reporting requirement. On January 31, 2017 you sought comments regarding ways to "reconsider whether the 2014 guidance of the conflict minerals rule is still appropriate and whether any additional relief is appropriate." These comments seek to show how the overly burdensome regulation has not fulfilled its intended purpose and negatively affected small businesses not originally targeted in the regulation.

NAED is a trade association for the $70+ billion electrical distribution industry. Through networking, education, research, and benchmarking, NAED helps electrical distributors increase profitability and improve the channel. Our membership operates in more than 5,100 locations internationally.

1. Background

Section 1502 of the Dodd–Frank Wall Street Reform and Consumer Protection Act (P.L. 111–203) directed the US Securities and Exchange Commission (SEC) promulgate regulations[1] requiring publicly-traded US firms to disclose annually whether their products contain certain minerals and whether those minerals "directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country."[2] The rule required manufacturers to trace four minerals to prove they were not from conflict regions in the Democratic Republic of the Congo (DRC): tantalum, tin, tungsten, and gold. Compliance with this rule has required large outlays of capital and man-hours to complete, however independent reports have shown it has hurt the Congolese people and achieved the opposite of its intention.

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[1] *Final Rule, Conflict Minerals*. Security and Exchange Commission. http://www.sec.gov/rules/final/2012/34-67716.pdf.
[2] P.L. 111–203 Sec. 1502(b)

Following the April 14, 2014 United States Court of Appeals decision determining the parts of Section 1502 to be unconstitutional the SEC issued guidance for companies to comply with parts of the rule that were not deemed to be unconstitutional.[3] This new guidance still required publicly traded companies to report to the SEC "a description of the due diligence that the company undertook" in attempting to determine if a product contained DRC conflict minerals, but not disclose the status as "DRC conflict free," "not been found to be 'DRC conflict free,'" or "DRC conflict undeterminable."[4]

2. Sec 1502 adds unnecessary costs to businesses never intended to be affected

To meet the updated requirements for Sec 1502, companies were required report on what due diligence was undertaken. Because very few publicly-traded firms control their entire supply chain, many non-required businesses were required to report the status of their products to the required companies putting undo burdens on these suppliers that were not covered in the original regulation.

In its Regulatory Flexibility Analysis (RFA), the SEC determined that the compliance cost of this rule would be between $3 and $4 billion, however private estimates put the compliance cost at closer to $16 billion.[5] For NAED members, this meant tracking the source materials for any product sold to a publically traded company, with the typical NAED member carrying over 16,000 products (referred to as SKUs) this becomes a difficult task to complete and create a new cost for suppliers and manufacturers.[6] This puts members who cannot trace 100 percent of their supply chain at a competitive disadvantage even if their supply chain is conflict mineral free.[7]

In addition to the RFA underestimating the cost of the regulation, it also underestimated the number of small businesses that would be affected at 793 firms. Approximately 6,000 publicly-traded US firms are subject to this regulation, however each of those firms can have hundreds if not thousands of suppliers. According to a report from one member of the National Association

[3] Higgins, Keith F. *Statement on the Effect of the Recent Court of Appeals Decision on the Conflict Minerals Rule.* Securities and Exchange Commission. https://www.sec.gov/News/PublicStmt/Detail/PublicStmt/1370541681994. 2014

[4] Ibid

[5] *Conflict Minerals, What you need to know about the new disclosure and reporting requirements and how Ernst & Young can help*. Ernst & Young. http://www.ey.com/Publication/vwLUAssets/EY_CnflictMinerals/$FILE/EY_ConflictMinerals.pdf . 2012

[6] National Association of Electrical Distributors, *2016 NAED PAR Report®* (2016).

[7] Coulter, Craig and Burton, Niul. *Conflict minerals and corporate supply chains: The challenge of complying with Dodd-Frank.* http://www.supplychainquarterly.com/topics/Procurement/20140304-conflict-minerals-and-corporate-supply-chains-the-challenge-of-complying-with-dodd-frank/

of Manufacturers, their firm has 22,000 direct suppliers and over 80,000 indirect suppliers that must trace their supply chains in order to comply with the regulation.[8]

NAED members have received requests from customers demanding conflict minerals reports that take time away from other tasks, often times requiring information that is not readily available further delaying completion of the reports. The increased burden caused by this regulation on firms that are not required to complete them for themselves takes away time that would normally be used to manage employees or grow the business.

3. Local mining infrastructure makes compliance nearly impossible

In 2014, the same year the updated guidance was released by the SEC, only 30 mines had been certified as not financing armed groups in the DRC out of over 1,000 mines in the North and South Kivu regions by the first filing deadline of Sec 1502.[9] With so few mines certified it is nearly impossible to determine if any minerals coming from the DRC meet the conflict free standard. Additionally, the conflict zones are continuously changing making it harder to source any minerals from the region.[10] Without a consistent source of documented conflict free minerals, many companies have simply stopped all sourcing of material from the region in order to safeguard their supply chains.[11]

4. Sec 1502 harms the people it is meant to protect

Section 1502 of Dodd-Frank is very clear in its intentions to reduce violence in DRC by reducing trade of minerals that could fund the violent groups:

> It is the sense of Congress that the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo is helping to finance conflict characterized by extreme levels of violence in the eastern Democratic Republic of the Congo, particularly sexual- and gender-based violence, and contributing to an emergency humanitarian situation therein.[12]

While the intention of the rule is unquestionably admirable, less than eight percent of conflicts in DRC are linked to minerals or mineral trade.[13] Additionally, the de-facto

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[8] *National Association of Manufacturers Comments to the SEC on Sec 1502 rulemaking.* http://www.nam.org/Issues/Trade/Conflict-Minerals/Final-NAM-Conflict-Minerals-Comments/

[9] Vogel, Christoph and Radley, Ben. *In Eastern Congo, economic colonialism in the guise of ethical consumption?* Washington Post. https://www.washingtonpost.com/news/monkey-cage/wp/2014/09/10/in-eastern-congo-economic-colonialism-in-the-guise-of-ethical-consumption/. September 10, 2014.

[10] [10] Johnson, Dominic. *NO KIVU, NO CONFLICT? The misguided struggle against "conflict minerals" in the DRC.* Pole Institute. April 2013.

[11] Jamasmie, Cecilia. *US mulls scaling back 'conflict minerals' rule.* Mining.com. http://www.mining.com/us-mulls-scaling-back-conflict-minerals-rule/. February 3, 2017.

[12] P.L. 111–203 Sec. 1502(a)

[13] *An Open* Letter relating to the efforts to reduce 'conflict minerals.' https://ethuin.files.wordpress.com/2014/09/09092014-open-letter-final-and-list.pdf

boycott of all minerals coming from the DRC, not just those in conflict regions, has had an economic affect on the Congolese and led to several unintended consequences. The reduction of trade has also hurt the legitimate miners in the country, forcing some mining families to find new sources of income including the militias this rule was meant to combat:

> When his father could no longer make enough money from the tin mine, when he could no longer pay for school, Bienfait Kabesha ran off and joined a militia. It offered the promise of loot and food, and soon he was firing an old rifle on the front lines of Africa's deadliest conflict. He was 14.
>
> But what makes Kabesha different from countless other child soldiers is this: His path to war involved not just the wrenching poverty and violence of eastern Congo but also an obscure measure passed by American lawmakers.[14]

In addition to turning poor Congolese towards the militias, the lack of trade in minerals does not stop the funding of the militias. Militias utilize illegal taxes, roadblock tolls, and outright theft to fund their activities and are often supplied by foreign groups from Rwanda and Burundi.[15] This regulation disproportionately harms all of the DRC while doing little to combat the violence caused by the militia.

5. Conclusion

Despite the best intentions the rule has created several unintended consequences that damage American small businesses. Rescinding this rule and allowing Congress and the Executive to develop better policies to this problem is the ultimate solution, however as long as the rule remains in place NAED encourages the SEC to minimize the impact of the rule on non-required companies to spend time and resources to comply with a rule that has not helped those affected by the conflicts in the DRC.

Respectfully,

Edward Orlet
Vice President for Government Affairs
National Association of Electrical Distributors

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[14] Raghavan, Sudarsan. *How a well-intentioned U.S. law left Congolese miners jobless.* Washington Post. https://www.washingtonpost.com/world/africa/how-a-well-intentioned-us-law-left-congolese-miners-jobless/2014/11/30/14b5924e-69d3-11e4-9fb4-a622dae742a2_story.html. November 30, 2014.

[15] Mikalano Mulotwa, Laurent. *The economy of armed groups in the eastern DRC.* Council for Peace and Reconciliation. https://mccintersections.wordpress.com/2015/07/13/the-economy-of-armed-groups-in-the-eastern-drc/. July 13, 2015.