

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

July 28, 2011

The Honorable Mary Schapiro
Chairman
Securities Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Dear Chairman Schapiro:

Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (P.L. 111-203) requires the U.S. Securities and Exchange Commission (SEC) to promulgate rules for public companies to disclose the use of minerals originating in the Democratic Republic of the Congo (DRC). As the SEC develops regulations to implement Section 1502, we urge you to consider a transitional implementation of this provision to ensure U.S. companies are able to comply and are not competitively disadvantaged in the global marketplace.

Section 1502 requires American companies to determine whether minerals, defined by Section 1502 (e)(4)(A) and (e)(4)(B) to be "conflict minerals," originated in the DRC. U.S. companies must comply with Section 1502, when "conflict minerals" are necessary to the functionality or production of a product. Unless companies can verify that the minerals did not originate in the DRC, they must 1) exercise due diligence on the source and chain of custody of conflict minerals; 2) have an independent third party audit the due diligence measures; and 3) file a report with the SEC disclosing the due diligence measures and their auditor's assessment of the measures.

Companies are willing to comply with Section 1502, but the infrastructure necessary for compliance does not exist. There are no mechanisms to certify the origin of "conflict minerals," and it will be difficult for companies to create a new certification system because it will require the cooperation of foreign suppliers and small businesses that are not subject to the SEC's jurisdiction. Verifying the chain of custody of "conflict minerals" will impose significant costs on the small business community and will also require global suppliers to make substantial modifications to their operations.

Tracing minerals from their extraction point in the DRC to processing facilities in other countries presents the biggest challenge to implementing Section 1502. The U.S. Department of State is statutorily required to provide a map of "Conflict Zone Mines," but the State Department's most recent map acknowledges DRC geographic data is incomplete, mining sites are inaccessible, and even the Congolese Ministry of Mines cannot obtain verifiable information. The State Department concedes that the information reflected on its map is not sufficient for companies to use to exercise effective due diligence on their supply chains.

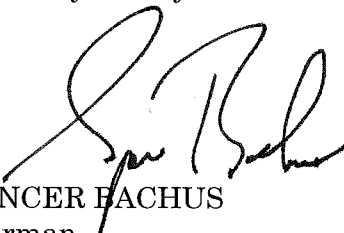
Given these limitations, most American companies will not be able to determine the origin of "conflict minerals" without a multi-tiered certification system, particularly at the smelter and refinery level. Until a system is established, most companies that use "conflict minerals" will be forced to file time-consuming and expensive SEC reports detailing their due diligence measures.

To mitigate the financial and administrative burden to U.S. companies imposed by Section 1502, the SEC should use its general exemptive authority in Section 36 of the Securities Exchange Act of 1934 by creating a temporary classification for minerals of an "indeterminate origin." The creation of an "indeterminate origin" classification would exempt companies from filing SEC reports, when the origin of "conflict minerals" is not possible to ascertain. Companies would still be required to conduct reasonable inquiries, as defined by the SEC, into the origin of "conflict minerals," and they would file reports when they purchase minerals from the DRC. The SEC could suspend the general "indeterminate origin" classification after a pre-set date to ensure compliance going forward. Furthermore, the SEC should retain the "indeterminate origin" classification for recycled materials after the transitional implementation is complete.


The SEC should consider the diverse nature of global supply chains when defining Section 1502's due diligence standards. "Conflict minerals" are used throughout the economy and due diligence standards should be flexible in order to meet the specific needs of each impacted industry. Also, the SEC should use its discretion to include a de minimis standard for "conflict minerals." A de minimis standard would prevent excessive and frivolous reporting triggered by trace minerals and byproducts.


Dodd-Frank Section 1502 will create immense challenges for U.S. companies if the SEC does not implement the provision with sufficient flexibility. The SEC should ensure the final rule is fair, orderly and transparent so U.S. companies can focus their resources on rebuilding the U.S. economy instead of filing expensive and inconclusive SEC reports.


Thank you for your consideration of this request.


SPENCER BACHUS
Chairman
House Committee on Financial Services

Sincerely,


GARY G. MILLER
Chairman
Subcommittee on International
Monetary Policy and Trade


ROBERT J. DOLD
Vice Chairman
Subcommittee on International
Monetary Policy and Trade


STEVE STIVERS
Member
House Committee on Financial Services