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The project to end genocide and crimes against humanity

An Activist's Guide to the Securities and Exchange Commission's Section 1502 Ruling

Enough Team

The U.S. Securities and Exchange Commission ruling on Section 1502 of the Dodd-Frank Wall Street Reform Act marks a crucial victory in the fight to end the use of the conflict minerals from the Democratic Republic of Congo. The tin, tantalum, tungsten, and gold that are mined in eastern Congo often finance armed groups and end up in consumer electronics such as cell phones, laptops, and televisions, as well as automotive equipment, jewelry, and other products. The commission's decision is a result of two years of hardline advocacy from numerous organizations, concerned citizens, and Congress following the successful passing of the bill.

Section 1502 requires companies to make information about their supply chains available to the public annually. Rep. Jim McDermott (D-WA)—a lead author of the original bipartisan-supported section—was a strong advocate for the release of the rules. In response to the ruling, he said, "The people of Central Africa, especially African women and children, need companies to act responsibly—and investors and consumers around the world need to know if companies are using a black market or a transparent market to manufacture their products."

The indisputable link between unregulated mineral extraction and the perpetuation of conflict in eastern Congo must continue to be addressed in a variety of different ways, but this important step will go a long way to ensuring that manufacturers dependent upon the region's minerals are forced to clean up their supply chains.

What does Section 1502 require?

The commission's final decision regarding Section 1502—a 356-page document—mandates a final report from companies that manufacture products that either definitely, possibly, or maybe contain conflict minerals. If, after investigating its supply chain, a company discovers that it uses minerals from the region in its products, it must submit a report to the SEC specifying the due diligence it undertook. This report must be audited by an independent third party. How companies get to this point is outlined in the following four reporting requirements:

Road map to transparency

- **Who qualifies as a manufacturer?** Step 1 defines the manufacturers that could be using the minerals in question—tin, tungsten, tantalum, and gold. (Does the company manufacture a product that contains tin, tantalum, tungsten, or gold? Does it contract with another company to make a product that contains these minerals?)

- **Are the minerals necessary?** Step 2 questions whether the minerals being used are necessary for the primary function of the product. (Are the minerals absolutely necessary for the primary purpose of the product?)
  ***Possible loophole:** Some companies may not need a mineral to achieve the primary purpose of their product, but they may still use a mineral in the design of the product e.g. for decorative purposes. This could mean that they avoid having to submit a report.

- **Where did the minerals come from?** Step 3 requires that companies using the minerals in question for the primary purpose of their product must identify the minerals' country of origin. (Where do the minerals come from? Possibly from the DRC or a neighboring country?)
  ***Possible loophole:** If a company successfully identifies most of their minerals in a product as conflict-free but still have a percentage whose origin is unknown, the company might also be able to declare the small, unknown material as conflict-free.

- **Found conflict minerals?** Submit report here. The fourth and final step applies to companies making products whose primary purpose is achieved with the usage of minerals that are extracted from the DRC or neighboring countries. The company must then submit a report of due diligence outlining its supply chain, disclosing the processing facility, its efforts to determine the mine of origin with the greatest specificity, and the country of origin. This information is not required if the minerals come from conflict-free sources in the region—a company must only report the due-diligence steps it undertook to make the determination that the minerals are conflict-free.

Bottom line

The finalizing and issuing of Section 1502 is a major victory in the fight to address the issue of conflict minerals in eastern Congo—one that might not have come had it not been for activist pressure on the SEC. Continued positive results will only be achieved with monitoring and strong public pressure on companies to fully implement the law and continue to invest in clean mineral supply chains coming out of the region. Despite a delay of over one year in issuing the final language, the rules give large companies two additional years to implement and four years for smaller companies. It will take continued dedication from activists to ensure the reports are accurate and submitted from all qualified companies.

As these reports are released, Enough and our partners will provide the most up-to-date information and action opportunities to help consumers make educated decisions and inspire activists to press for continued change. As we build on the victory of Section 1502, many other steps will be required to bring a sustained peace to eastern Congo. We will work together to continue to address the economic drivers of conflict in eastern Congo to bring about other necessary reforms.

For more information about this decision, please see:

The SEC's Final Rule on Conflict Minerals: Reporting Requirements for Companies by the Enough team

Flowchart Summary of the Final Rule by the Securities and Exchange Commission for guidance in understanding their final decision