

Controversy grows in US over plans to abolish Conflict Minerals Rule

SEC acting chair asked the public, but is now 'ignoring' the overwhelming answer



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Despite the anti-regulatory fever currently gripping Washington, DC, it seems at least one business regulation has proved far more popular than any of its critics had imagined.

It is uncommon for businesses to advocate for their own regulation. Even more unusual for human rights activists, community leaders, and civil society groups to stand alongside investor groups and multinational corporations regarding a US policy that seeks to reduce funding to armed groups in somewhere as far off as the Democratic Republic of the Congo (DRC). But in the case of the Conflict Minerals Rule, we see just that convergence of interests.

The Rule is a transparency measure requiring foreign and domestic companies listed on the US stock exchange to report on their due diligence with regard to the presence in their supply chain of conflict minerals: tin, tungsten, tantalum and gold (3TG) from the DRC or surrounding region. The Rule promotes the transparency of global supply chains, and is part of a critical effort to break the links between the mining of these precious minerals and grave violence, including human rights abuses, rape and murder.

On the last day of January, former acting chair of the Securities and Exchange Commission (SEC), Michael Piowar opened up a public comment period to explore whether "additional relief" is needed for his agency to implement the Rule – without consultation among other senior SEC leadership. This unusual move from a person in his position came shortly before a hearing in the Senate Subcommittee on Africa and Global Health Policy as well as reports that the Trump administration has considered suspending the Rule for two years.



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Commissioner Piowar wanted to know: is the Conflict Minerals Rule worth implementing?

But sometimes in asking a question, you don't always get the answer you expect.

The surprise for critics has been the flood of comments to the SEC defending the Rule. Ninety-nine percent of the comments asked for the SEC to uphold not weaken it. Supportive comments came from a wide spectrum of stakeholders including industry leaders, investors, consumers, human rights groups and Congolese civil society groups. Nearly 12,000 comments were posted during the 45-day comment period. Of those, fewer than 100 submissions argued for the Rule to be repealed or weakened.

So why, in the face of such extensive support, did Commissioner Piowar make an [announcement](#) late on a Friday afternoon in April that concluded, "it is difficult to conceive of a circumstance that would counsel in favour of enforcing Item 1.01(c) of Form SD," which is at the core of the

Rule's transparency requirements? Further, he took highly irregular and apparently unilateral action by not consulting his only other fellow Commissioner, Kara Stein, before making the announcement.

Commissioner Piowar's statement to suspend enforcement of the Rule, if upheld by newly confirmed SEC chair Jay Clayton, will surely have ramifications for the agency's most prominent constituency: investors. Given that a primary goal of the SEC is to protect them, it should be noted that every investor comment was in support of the Rule. One group of investors, managing \$4.8tn, [described](#) how company disclosures on sourcing practices have "provided investors with important transparency into relevant and material human rights risks."

Some who submitted comments opposing the Rule argued that it creates an undue burden for companies, and Commissioner Piowar's 7 April announcement echoed this concern. But Richline, a leading jewellery manufacturer, defended it, [explaining](#) it "has helped strengthen our own responsible

supply chain management practices.” And KEMET, one of the world’s largest users of tantalum, [commented](#) that its business value is clear and cost of compliance is minimal. In fact, new analysis shows that costs for companies implementing the Rule are actually [74-85% less](#) than initial SEC estimates.

Major consumer product companies like Apple, Intel, and Tiffany & Co have also been [voicing strong support](#) for the Rule and are working to ensure that it isn’t rolled back.

Some opponents argue that it is not contributing to decreased violence in eastern Congo. However, a 2016 survey by the International Peace Information Service there found that 79% of miners of tantalum, tin and tungsten were working in mines where no armed group involvement was reported. That progress is a stark contrast to a UN Group of Experts report seven years ago that found that in the Kivu provinces of eastern Congo, “nearly every mining deposit was controlled by a military group.” The early implementation of the Rule was difficult, and still more must be done to support Congolese miners, but conflict-free trade in Congo has grown significantly since

2011 and helped improve rule of law.

Critically, [111 civil society groups from Congo](#) – those who will face serious consequences of any rollback of the Rule – voiced their support for it in 11 separate letters. One of these letters, signed by [41 Congolese civil society](#)

Reversing the still fledgling progress made by this key supply chain transparency measure could spark a return to a situation in Congo where armed groups once again control every mine

organisations, warned that “efforts and progress will be destroyed” if the Rule goes away, and lauded progress in reducing crime rates and human rights violations, including rape and exploitation of children in mining areas. Another [human rights and anti-corruption group](#) warned that abolition will “facilitate the proliferation of

armed groups” and killings will increase.

The progress is clear. The comments are in. And the overwhelming consensus is that the Conflict Minerals Rule should be maintained. Given that companies were still required by law to submit complete and thorough conflict minerals reports by the 31 May deadline, incoming SEC Chairman Jay Clayton should immediately clarify his agency’s intent to uphold enforcement of the Rule.

Reversing the still fledgling progress made by this key supply chain transparency measure could spark a return to a situation in Congo where armed groups once again control every mine through intimidation and violence. At a time when Congo’s political future remains unnervingly uncertain and violence is already on the rise, any additional fuel to the fire could have disproportionately devastating ramifications. Those aiming to weaken, amend, or dismantle the Conflict Minerals Rule – including Commissioner Piwowar and those he answers to – would own that outcome.

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