

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

Re: Comments on Reconsideration of Conflict Minerals Rule Implementation

The Enough Project submits this comment in response to Commissioner Piwowar’s January 31, 2017 Statement on the US Securities and Exchange Commission’s (“the Commission”) Conflict Minerals Rule (“the Rule”). Significant evidence has shown that the Rule has had an overall positive impact in eastern Democratic Republic of Congo (“Congo”) and on minimizing supply chain risks to U.S. corporations and investors, increasingly so over time as implementation of the Rule has improved. We thus urge the Commission to leave the current Rule intact and to take additional measures to ensure compliance with the Rule before pursuing changes. The Rule is consistent with other standards on corporate supply chain due diligence, such that change to or repeal of the Rule will not reduce costs for U.S. businesses.

Suspending or significantly weakening the Rule would undermine peace and security and would not reduce costs for U.S. businesses. The Rule has led to improvements in the rule of law in the mining sectors of Congo, Rwanda, and other Great Lakes countries, contributed to improvements in humanitarian conditions in Congo and a weakening of key insurgent groups, and resulted in tangible benefits for U.S. corporations and their supply chains. If the Rule is suspended or weakened, it would incentivize armed groups in eastern Congo to return to hundreds of mines, causing an increased humanitarian crisis. This would also lead to increased corruption in the minerals certification process in Congo and the region, thus creating major risks for U.S. companies sourcing minerals, and it would likely lead to a new *de facto* embargo on minerals from Congo, Rwanda, and the Great Lakes region. Furthermore, the cost for U.S. businesses to comply with the rule has been 74 to 85 percent less than the original SEC estimate, according to new information from Elm Sustainability Partners.

The Enough Project seeks to build leverage for peace and justice in Africa by helping to create real consequences for the perpetrators and facilitators of genocide and other mass atrocities. We aim to counter rights-abusing armed groups and violent kleptocratic regimes that are fueled by grand corruption, transnational crime and terror, and the pillaging and trafficking of ivory, diamonds, and other minerals and natural resources. We conduct field research in conflict zones, develop and advocate for policy recommendations, support social movements in affected countries, and mobilize public campaigns.

The Enough Project has been involved in work on conflict minerals since 2008, including several extensive research projects in mines and mining communities in eastern Congo. We remain an active participant in the process to build up a conflict-free minerals trade and end the conflict minerals trade, from our participation in the Public-Private Alliance for Responsible Minerals Trade to the Responsible Artisanal Gold Solutions Forum to the OECD Multi-Stakeholder Group on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas to conducting further field-based research on the issue. As a result, we have compiled substantial evidence

that supports the Rule remaining intact, both for the goal of supporting peace in Congo and of creating transparent supply chains that benefit companies, investors, and consumers.

Some of the Rule's concrete impacts include:

- **Taking away profits from armed insurgents and military units.** Minerals have been a major fuel for conflict in eastern Congo, but the Rule has helped make three out of the four conflict minerals largely peaceful. [79 percent of miners](#) at tin, tantalum, and tungsten mines surveyed in Congo now work at conflict-free mines, according to a study by the International Peace Information Service in October 2016. This is a major change, as the [U.N. stated in 2010](#), the year that Dodd-Frank passed, that nearly every mine was controlled by a military group. Some armed groups and military units continue to profit from gold, as it is much easier to smuggle, and so additional measures such as targeted sanctions on conflict gold traffickers are needed to stem the conflict gold trade. But the overall amount of mineral wealth available to armed actors has decreased since the passage of the Rule.
- **Improving the transparency of corporate supply chains.** The Rule caused electronics companies in the U.S. and internationally to set up auditing programs for minerals smelters worldwide, the key choke point in minerals supply chains. These audits are an important step, as they are independent and third-party and they close many loopholes for smuggled conflict minerals in supply chains. Before the law passed, no smelters had been audited. Today, [75% of the world's smelters](#) for the four minerals have now passed independent audits on conflict minerals (246 out of 325 smelters).
- **Helping reduce the power of major armed groups.** The Rule took away one key incentive for Rwanda's destabilizing interventions in Congo's conflict: their ability to profit from 3T minerals (tin, tantalum, and tungsten). This was not the only incentive for Rwandan meddling but it was an important one. Because of the Rule and improved implementation and certification of conflict-free mines in Congo, it has become less and less profitable for Rwanda to smuggle conflict minerals. An increasing number of 3T mines have become certifiably conflict-free in Congo, thus decreasing the smuggled trade to Rwanda. Before the law passed, there were a series of Rwandan-backed rebel groups, but today there is no longer a major Rwanda-backed armed group in Congo. Also, the FDLR insurgency, a designated terrorist organization with strong links to the Rwandan genocide, has dwindled from 6,000 troops in 2007 to fewer than 1,000 in 2016, according to the United Nations.
- **Reduced costs for U.S. companies.** The cost of complying with the Rule cost U.S. businesses 74-85% less than the initial SEC estimate (\$600-800 million for all companies in total vs. \$3-4 billion estimated by the SEC), according to a [new independent study](#). U.S. companies also benefited tangibly from the rule through the formation of traceability systems and conflict minerals risk mitigation approaches. The study also notes that if the Rule is eliminated, cost savings for U.S. businesses will be "far less than 100% of the current implementation costs."
- **Helping decrease human displacement.** The number of internally displaced people in Congo has decreased from 3.4 million in 2008 to 1.9 million at the end of 2016. There have been several factors contributing to this, but the Rule has been one of them, as decreased violence in several (though not yet all) mining areas has allowed people in those areas to return to their homes.



- **Improving the rule of law and increasing the conflict-free minerals trade from Congo.** While initial implementation of the Rule contributed to a temporary *de facto* embargo in 2011, this has changed significantly since then, and the Rule has now spurred record-breaking exports of clean, conflict-free minerals. Congo’s North Kivu province exported a record [1,121 tons of conflict-free tantalum and 1,550 tons of conflict-free tin in 2016](#). The Rule also spurred the first-ever minerals certification process, that of the International Conference on the Great Lakes Region, and [204 mines have been certified as of 2016](#).

Many U.S. businesses, particularly electronics companies, have benefited from the Rule. They have seen decreased supply chain risks especially for tin and tungsten, increased transparency in the minerals trade and their supply chains, and new investment opportunities in Congo and the surrounding region. Several companies, from Tiffany & Co. to Richline to Apple, have publicly and privately expressed support for the Rule. Two U.S. companies, KEMET Electronics - a leading global supplier of electronics components - and Alphamin Resources Corp. - a tin mining company - have in fact cited Dodd-Frank 1502 and the Rule as reasons they decided to invest proactively in Congo and the surrounding region. In his November 2015 testimony before the House Subcommittee on Monetary Policy and Trade, KEMET CEO Per Olof-Loof stated, “The Dodd-Frank Act has certainly helped companies like KEMET to again, after decades of absence, be able embrace the DRC allowing us to develop a competitive and secure supply chain, improving both our competitiveness and the life of the people in the village [in the DRC].” [Alphamin COO Trevor Faber](#) said “If it wasn’t for Dodd Frank, we wouldn’t be on the hill” where the large Bisie tin mine is situated in North Kivu province. Other companies and associations have also looked for ways to invest more directly in Congo because of the investment in their supply chains prompted by the Rule, decisions that would have been quite unlikely without the Rule.

It is also premature to suggest the need for the Rule to be reconsidered when the SEC has taken no known enforcement action to date with regard to the Rule. Without records of enforcement from the agency with jurisdiction over the Rule’s implementation, it is impossible to determine whether “any additional relief is needed,” as Commissioner Piwowar suggests. Additionally, while he notes the D.C. Circuit Court’s decision to strike the conflict minerals descriptor requirement from the Rule, he neglects to highlight the Court’s clear holding that the vast majority of the Rule is in line with the intent of Congress, and therefore an eminently appropriate measure for addressing the concern with conflict minerals entering issuers’ supply chains.

Below we describe in greater detail the reasons why suspending or weakening the Rule would be counterproductive to national security and humanitarian interests, and detrimental to U.S. business interests. We highlight in particular the words of Bishop Nicolas Djomo, Diocese of Tshumbe, the Democratic Republic of Congo, who, in his May 2012 [testimony](#) before the House Subcommittee on Monetary Policy and Trade, stated:

“We urge the U.S. business community to account for the gruesome social costs of the illicit mining as they calculate their costs for compliance with Section 1502. These calculations are not just cost estimates on a spreadsheet. There is a social balance sheet that places value on the lives that can be saved.”

Progress in Congo and the Region

Consistent with its objective, Dodd-Frank 1502 has spurred reforms that have led to a major reduction in the number of conflict mines in eastern Congo. Before Dodd-Frank 1502, there was no operational certification mechanism for distinguishing conflict mines (i.e. mines controlled by armed groups or the Congolese army) from conflict-free mines, and there were no federal transparency requirements for companies on conflict minerals. The law and related reforms have changed these circumstances and created a two-tier market whereby the price for untraceable 3T conflict minerals is significantly lower than the price for verified conflict-free minerals. For example, [the Enough Project found](#) that in surveyed locations in 2014, minerals that did not go through conflict-free certification sold for 30 to 60 percent less than minerals verified as conflict-free. This price difference has made the trade in 3T minerals significantly less lucrative for armed groups.

As of 2016, the [International Peace Information Service](#) found that over three-quarters (79 percent) of 3T miners surveyed in eastern Congo were working in mines where no armed group involvement has been reported. This is a significant change given that the [U.N. Group of Experts](#) stated as recently as 2010 that “in the Kivu provinces, almost every mining deposit [was] controlled by a military group.” There is now also an emerging certification mechanism run by the [International Conference on the Great Lakes Region](#) (ICGLR), and mines have begun to be validated as conflict-free. As of April 2016, [204 mines](#) in eastern Congo had been validated as conflict-free by multi-stakeholder teams made up of U.N. officials and Congolese civil society, business, and government representatives. [In surveyed locations](#), “minerals that do not go through conflict-free programs sell for 30 to 60 percent less” than minerals verified as conflict-free, thus reducing profits for armed group trying to sell conflict minerals.

The Rule also took away one key incentive for Rwandan intervention in Congo's conflict, the 3T minerals. This was not the only incentive for Rwandan meddling but was an important one. Because of the Rule and improved implementation and certification of conflict-free mines in Congo, it has become less and less profitable for Rwanda to smuggle conflict minerals. An increasing number of 3T mines have become certifiably conflict-free in Congo (204 at last count), thus decreasing the smuggled trade to Rwanda. Before the law passed, there were a series of Rwandan-backed rebels, but today there is no longer a major Rwanda-backed armed group in Congo. Also, the FDLR insurgency, a designated terrorist organization that includes perpetrators of the Rwandan genocide, has dwindled from 6,000 troops in 2007 to fewer than 1,000 in 2016.

Conflict gold and 3T mineral smuggling to neighboring countries such as Uganda and Rwanda are issues that the UN Group of Experts and others have documented thoroughly. Minerals smuggling has decreased overall, as a greater number of mines have become certifiably conflict-free. However, gold smuggling remains a critical issue in particular to address, and the United States and United Nations should place targeted sanctions on conflict gold smugglers and diplomats in the region should convene Congo and the Great Lakes governments to reduce the incentives to smuggle, for example uneven gold tax rates. While these challenges remain, scaling back the implementation of the Rule would only exacerbate them while simultaneously undermining the myriad examples of progress.

Congolese Support for the Rule

Many Congolese communities and leaders—including Nobel Peace Prize nominee and Sakharov Prize winner Dr. Denis Mukwege, community activist Justine Masika Bihamba, and Bishop Nicolas Djomo — support Dodd-Frank 1502 and the corresponding Rule. Leaders and activists support the Rule because they have seen direct positive impacts, because they believe in transparency and the rule of law, or both. Below is a sample of this support:

- [Dr. Denis Mukwege](#), renowned Congolese surgeon for victims of sexual- and gender-based violence, founder of the Panzi Hospital: "A conflict-free minerals industry would contribute to ending the unspeakable violence the people of Congo have endured for years. Government must not only enact strong legislation, they must be willing to enforce the law. Companies bear the responsibility of compliance and public disclosure, and acting transparently as consumers are increasingly aware of conflict-free components on the market. Tens of thousands of legitimate miners would benefit from a clean, transparent minerals industry...The mineral trade is one of the components that drive suffering in Congo."
- [Justine Masika Bihamba](#), Coordinator of the organization Synergy of Women for Victims of Sexual Violence: "10 years ago, we were under de facto control of armed groups...today, let's admit we are a long way from that. And if we're honest, that's in part because of Dodd-Frank – it came to shine the light on those illicit actors. Today, despite the problems with governance, you can feel more government control."
- [Open letter signed by 31 Congolese civil society leaders, experts, and former ambassadors](#): "It is time for another broader push for reform on conflict minerals and natural resource governance in order to complement the Dodd-Frank legislation and deepen related minerals reforms. Dodd-Frank has been the primary driver of corporate and regional policy change on conflict minerals."
- Georges Nzabanita Iyamuremye, Congolese civil society leader and NGO founder (Submitted for Congressional Record, November 17, 2015): "The conflicts in eastern Congo have been mostly fueled by natural resources which rebel groups smuggle through neighboring countries such as Rwanda and Uganda. Rebels in eastern Congo have no plan to change the regime of Kinshasa which is characterized by corruption in private and public sectors, but rather they are more interested in plundering the Congo's natural resources for their own gain."
- [International Conference on the Great Lakes Region \(ICGLR\) Declaration on Section 1502](#): "the ICGLR Secretariat believes that the repeal of Section 1502 of the Dodd Frank Act will weaken the ICGLR [Regional Certification Mechanism for conflict minerals]. Therefore, the ICGLR is highly concerned that this might contribute to the resurgence of armed groups controlling and exploiting minerals. This might ultimately lead to a generalized proliferation of terrorist groups, trans-boundary money laundry and illicit financial flows in the region."

Benefits for U.S. Business

Transparency has an important role in lowering business risk and stabilizing supply chains, and the Rule has contributed to these elements. ELM Sustainability Partners, a leading independent advisory firm, [notes](#) in their own comments in response to Commissioner Piwowar's statement several tangible benefits to U.S. companies including:



- Spurring development of leading supply chain expertise and traceability systems that have formed the basis of new international supply chain due diligence frameworks
- Identifying supply chain risk mitigation opportunities unrelated to conflict minerals, Improving significantly the visibility into U.S Treasury Office of Foreign Assets Control (OFAC) compliance, and
- Establishing new permanent jobs for U.S. small businesses.

Projected compliance costs have long been a focus of critics of the Rule, claiming it places ‘undue burden’ on companies. However, ELM found that compliance costs are in fact 74-85% less than the initial SEC estimate. While the SEC projected \$3-4 billion for total company costs, ELM estimates costs at \$600-800 million for all companies. Additionally, these costs have dropped significantly as new tools and processes have been developed that help to streamline compliance and as supply chain due diligence requirements become elements of, or are recognized by, other certification standards.

In addition to benefits to individual companies, the Rule has also spurred positive reforms across entire industries that have resulted in improvements across supply chains. For example, the Rule generated significant momentum for a tech industry auditing system set up by U.S. tech companies for mineral smelters and refiners worldwide, the key choke point in minerals supply chains. Before the Rule was implemented, no smelters had been audited; today, 75% of the world’s smelters for the four minerals have now passed independent audits on conflict minerals (246 out of 325 smelters).

The Rule is beneficial to both investors and consumers. [According to a group of over 100 investors](#) with assets under management in excess of \$3.75 trillion:

Conflict minerals disclosure is material to investors and has informed and improved investors' ability to:

- Assess social (i.e., human rights) and reputational risks in a company's supply chain.
- Assess a company's long-term mitigation of risks related to the supply of minerals, liability, and other material risks.

The current Conflict Minerals Rule's disclosures are consistent and accessible to all investors, thereby improving efficiency in U.S. markets in allocating capital to issuers with the best overall prospects for long-term shareholder value. We understand that the transformation to a peaceful and prosperous mining industry in the DRC region has been slow and challenging. Company disclosures on sourcing practices, combined with analysis provided by groups like Responsible Sourcing Network on the quality of such disclosures, has provided investors with important transparency into relevant and material human rights risks. We consider that in order to ensure that implementation with this rule achieves maximum impact, it is critical for the SEC to pursue robust enforcement of the requirements.

Individual consumers have also expressed demand for conflict-free products. Thanks to sustained student activism, more than two dozen schools and universities across the nation and internationally, and various

cities and states in the U.S. have passed campus-level procurement resolutions that favor companies that are working to source conflict-free minerals from Congo for their products.

The Future of Supply Chain Due Diligence

The Rule requires companies to know and report on a baseline level of information about their supply chains. Major global markets such as the EU and China are already taking steps towards increased transparency and supply chain due diligence, both with respect to conflict minerals and also on broader “[non-financial reporting](#).” and the United States should not fall behind by eliminating the Rule. It is important to note, however, that the [E.U. regulation will not be implemented until 2021](#) and is significantly weaker than the U.S. Rule, so suspension of the U.S. Rule would leave a major gap in global corporate due diligence. Additionally, other jurisdictions within the United States are already implementing their own measures to encourage and enforce conflict-free sourcing: Massachusetts, California, and Maryland have all passed state-level conflict-free legislation, and five U.S. cities, including Pittsburgh, PA and Portland, OR have passed similar city-level legislation. Maintaining robust federal standards is crucial to ensuring these smaller jurisdictions can remain coordinated and not place disparate procurement requirements on companies, essentially increasing the number of standards they are held to.

In addition to other jurisdictions requiring conflict minerals due diligence, company compliance efforts to implement the Rule are increasingly being subsumed within, or complemented by, larger compliance regimes. For example, as companies begin focused implementation of the UN Guiding Principles on Business and Human Rights, minerals-related supply chain issues may represent “salient human rights risks” that require due diligence and mitigation. The Rule provides a framework for companies to take such actions, which they will still need to do even if the Rule were to disappear. As a result, the Rule can be seen to do as much to help focus company efforts and costs as it does to increase it. The U.S. government included the Rule as one of [its “ongoing commitments” within the National Action Plan on Responsible Business Conduct](#), and this work should continue. Further, [the OECD Guidelines on Multinational Enterprises](#) and other frameworks used by business to organize compliance incorporate supply chain due diligence as a basic principle. As implementation of the Guidelines also expands through the efforts of the National Action Plan, the Rule provides a useful framework for companies for efforts that they will need to undertake.

Moreover, company efforts to develop baseline supply chain information are also steps that assist compliance with U.S. and UN economic sanctions regimes. Both the U.S. and UN Security Council maintain sanctions regimes that focus on the illicit trade in natural resources in Congo, and other sanctions programs include minerals-focused restrictions. The [Financial Action Task Force has also focused on the potential for gold to serve as a vehicle for money laundering](#), and given the risks that jurisdictions like Congo pose in this regard, the Rule provides a structure for companies to assess potential risks. These are not obligations that companies can choose to ignore, and compliance with the Rule, as referenced by Elm Sustainability above, can greatly assist and advance compliance with programs that protect national security and preserve the integrity of the U.S. financial system.



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In sum, although much can and needs to be improved beyond the scope of the Rule in order to achieve the entirety of the Rule's intended objectives, revising or eliminating the Rule will have detrimental effects on human security and business. Addressing the gaps in curbing the funding of violent armed groups will be achieved through the implementation of additional complementary measures, not through re-litigating or jettisoning a long and deliberative process that has already been set in motion across the globe and is beginning to demonstrate concrete results in Congo and the surrounding region and, over time, a range of benefits to companies.