March 2, 2011

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Ms. Murphy:

The Competitive Enterprise Institute ("CEI") appreciates the opportunity to provide the Securities and Exchange Commission (the "Commission") with comments on the rulemaking that will be required by the Commission to implement Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Section 1502").

Section 1502 of the Dodd-Frank Act amends Section 13 of the Securities Exchange Act of 1934 to impose a new reporting requirement on publicly traded companies that manufacture products for which "conflict minerals" are necessary to their functionality or production. Conflict minerals include "columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives" and other minerals determined by the Secretary of State to be financing conflict in the Democratic Republic of the Congo (DRC). Wolframite is highly valued as the main source of the metal tungsten, while cassiterite is the most important source of tin. These minerals are widely used in the production of electronics and other products.

With respect and consideration for the Commission, we recognize that practical implementation of this law will be impossible without sanctions or an embargo already in place. Section 1502 places the proverbial cart before the horse. This legislation, unlike the Clean Diamond Trade Act, implements regulation and oversight without international participation, and without any international sanctions or even a domestic trade embargo already in place[1].

The law attempts to put a stigma on a commercial activity without making that activity expressly illegal. America's securities disclosure laws are being utilized as instruments of foreign

[1] United Nations general assembly enacted the Kimberly Process Certification Scheme which prompted the United States to pass the "Clean Diamond Trade Act" signed by Bush in 2003, thereby acting in compliance with the global forum.

policy, at odds with their longstanding purpose of providing material information to better inform investors. This flawed approach will produce many negative consequences, both for U.S. investors and business and for the DRC citizens the law is attempting to help.

It is urgent that the Commission be fully aware of the effects that this provision will have on innocent civilians in DRC and American businesses of many sectors. These minerals are commonly utilized in a variety of commercial products, such as automobiles, cellular phones, and airplane engines. The legislation therefore affects a large spectrum of industries, including technology, automotive, mining, jewelry, and aerospace.

This flawed but well-intentioned law must be implemented narrowly and carefully. In the interest of the American economy and international stability, the Commission must be attuned to the effects this provision will have on 1) real people working in legitimized markets in peaceful regions of the Congo and 2) the negative effects this implementation will have on the United States at home and abroad.

Discussion

The Competitive Enterprise Institute (CEI) is a non-profit public policy organization dedicated to advancing the principles of limited government, free enterprise, and individual liberty. Founded in 1984, our mission is to promote both freedom and opportunity. We make the uncompromising case for economic freedom because we believe it is essential for entrepreneurship, innovation, and prosperity to flourish. We have long supported laws and policies to liberalize trade among nations, because we believe that free trade not only improves America's standard of living but helps foster conditions for peace, prosperity and stability in less developed countries.

In these comments, we attempt to provide the most common-sense approach to implementing this legislation by providing the least amount of strain on legitimate trade in peaceful, self-sustained sectors of the Democratic Republic of the Congo (DCR).

By way of history, there are two main types of mining operations in the Democratic Republic of the Congo (DRC).

1) Legitimate mining, that is, mining whose security is sponsored by the United Nations, the government of the DRC, or a privately contracted security force that meet the standards of the former.

2) Illegitimate mining, that is, mining controlled by an armed group which is not directly part of the UN or DRC government.

Ignorance with regard to the duality of the DRC mining market led to this oversimplification of a complex issue in the law. For all practical applications, mining is the lifeblood of legitimate commerce in the DRC. Gold and the other "conflict minerals" are essentially the only economy for many parts of the region. Legitimate mining is the only resource the DRC government and the workers in the region have in fighting illegitimate mines that compete in the same market. Legitimate mining thrives from public trade and international markets.

Reverse effect on civil war in DRC

I. In interpreting Section 1502, the Commission must take into consideration that the reporting requirements will mostly affect the legitimate miners who rely on public trade to fight political dominance of militant insurgent groups.

Implementation of this law must be carefully examined on behalf of the markets that allow legitimate mines to function. Any negative impact on this process would force the troubled region in the world backward in terms of peace and individual freedoms. For example, 200,000 legitimate miners function in Chudja alone, a peaceful region of the DRC. This law, if not implemented carefully and narrowly, could affect those workers and civilians who rely on free trade to continue to function against militant regimes. If implemented broadly, Section 1502 could have an effect precisely the opposite of what its supporters intended; it could bring conflict and chaos to peaceful regions of the DRC, as well as adjoining countries. Section 1502 risks creating a de facto embargo on trade with the DRC and the adjoining regions. Subsequently, as public trade with these countries decreases, the economy and prosperity of the entire nation decreases, increasing the power of militant groups.

Militant groups in the DRC are funded in much the same way as mobs, gangs, and drug cartels—in the underground market of smuggling and selling. It is well known that nearly all the gold from Africa is smuggled out of the country[2], so any measure short of militarizing, policing, and monitoring the countries' borders would not constructively support the goal of defunding violent militias in the DRC region. Broad implementation of Section 1502 would only cause innocent workers and legitimate participants in public trade markets to lose their jobs and the only source of wealth they have to fight the highly violent militias within the DRC.

Unintended effect on American businesses disconnected from illegitimate mining

[2] Scholars and humanitarian research institutes estimate that anywhere from 80-99% of gold is smuggled from the Democratic Republic of the Congo.

II. 1502 could have a devastating effect on American business and investors so long as these materials are valued as market commodities.

Undoubtedly, these minerals will make their way onto the market and their value will only increase. Every person/entity doing business without these new regulations and compliance requirements will stand to profit against the United States, while our domestic businesses providing private sector jobs are placed at a competitive disadvantage against international trade markets[3]. We are essentially holding ourselves to a burdensome standard that involves more cost to business than any measurable benefit to DRC civilians. As such, we recommend the following strategies to narrow the implementation of this law to limit harmful effects while still upholding the legislative intent to defund violent militant groups in the DRC.

Proposed strategies for implementation to minimize disruption in domestic and foreign markets:

a) The Commission should implement an "opt-out mechanism" that will limit the amount of oversight and regulation administered by the Commission while still requiring disclosures that meet the legislative intent.

The Commission should create a mechanism that fulfills the intent of 1502 without the undue burden on American entities. Compliant persons/entities providing a disclosure statement by stating "no evidence of DRC or adjoining country" should act to eliminate further reporting requirements and should not be further subjected to third-party audits. They will, of course, still be subject to penalties in the law if found in violation.

Additionally, if this provision was written more effectively to distinguish legitimate mining from illegitimate mining[4] (something the SEC should consider requesting from Congress), a more effective mechanism could be in place without ostracizing and stigmatizing an entire region. As such, a compliant person/entity trading/obtaining minerals from a legitimized mining operation in the DRC could provide a disclosure statement that states "no evidence of illegitimate mining." The DRC as a whole should not be ostracized from trade, especially when trade promotes democratization and peaceful progress in the region. The

[3] These minerals are commonly utilized in the manufacture and sale of cellular phones, airplane engines, automobiles, jewelry, medical equipment, and aerospace technology.
[4] Rather than the language "DRC and adjoining countries"

mechanism can still be held to a due diligence standard but could eliminate the costly requirement of proving a negative[5].

b) Given the nature of the supply chain from minerals to source, the Commission should apply additional reporting requirements only to newly extracted or mined gold/minerals and to their direct consumers.

Left to a broad interpretation, Section 1502 can extend to finished products—electronics, machinery, micro-technology and other working capital where the United States is already at a disadvantage. Limiting the applicability of Section 1502 would serve the same legislative purpose and alleviate American companies, not directly involved in the trade of gold or minerals, of an unfair market disadvantage prior to the enactment of international sanctions. Exempting all other persons/entities in the chain except for those directly funding the conflict (or who knowingly indirectly fund the conflict) will allow this law to better serve a direct means to the proposed legislative end, rather than harm American businesses that have to meet these costly requirements to prove that they do not somehow participate in the chain of funding illegitimate mining operations. Under a broad implementation, the United States would only be subjecting its market participants to this costly objective that will drive natural minerals and resources further underground, thus burdening all market participants.

Conclusion

Mandating that American businesses – and indirectly their shareholders -- pay for costly audits and fulfill burdensome due diligence requirements to trace the sometimes undetectable source of these minerals is the most harmful way possible to serve the legislative intent of Section 1502. Thus, we respectfully advise the Commission to provide an opt-out provision for persons/entities who have no knowledge in dealing with illegitimate mining of conflict minerals, and to limit the scope of mineral disclosure requirements to only *newly* mined minerals (eliminating costs for those who deal in recycled minerals).

Thank you for the opportunity to comment on these important issues, and we would be happy to answer any questions you may have.

Sincerely,

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[5] By requiring compliant companies to meet these standards only to further corroborate that they do not fund illegitimate mining operations.

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