

Brief Supporting Conflict Mineral Lawsuit Against SEC Cites Harm to the Republic of Congo

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A group of academics and former government officials who are referred to as experts on the Democratic Republic of Congo (DRC) have filed an amicus brief in support of the lawsuit challenging the SEC's rules on reporting of conflict minerals. The brief argues that if the SEC had properly evaluated the costs and benefits, it would have concluded that the rule will worsen conditions in the DRC due to the expense associated with compliance by companies. The group is concerned that companies will cease sourcing minerals from the DRC altogether, harming the livelihood of miners. In addition, those costs will prevent companies from investing in traceability programs that would have enabled them to determine whether minerals are from mines controlled by armed groups. Without such programs, a legal market for DRC-sourced minerals cannot develop and the SEC rule will in effect benefit those armed groups which are best equipped to smuggle minerals out of the DRC.

This expert group indicated that its goal is not to support the commercial interests of the petitioners that brought the suit, which includes the Chamber of Commerce and the Business Roundtable, but rather to emphasize that the SEC rule fails to advance the statute's objective to weaken armed groups in the DRC. The brief describes the history of the warfare in the DRC that led Congress to adopt Section 1502 in the Dodd-Frank Act, with the perverse effect of forcing thousands of miners to flee from their only means of support and abandon mine sites, due to the increased strength of the very armed groups that the statute wanted to help eradicate. The brief emphasized that the SEC should have considered these consequences in its cost-benefit analysis, and that the Commission further exacerbated the issues when using its discretion in adopting the rules.

By reference to the petitioners' brief, the experts claim that the SEC went beyond the requirements of the statute and allege that the Commission expanded its intended reach. According to the petitioners' brief, by its terms Section 1502 applies only if conflict minerals are necessary to the functionality or production of a product manufactured by a company, which should mean that the statute apply only to manufacturers. However, in adopting the rule, the SEC indicated that the statute would be internally inconsistent if companies that merely "contract to manufacture" these products were not also required to file reports, since the legislation mandates that any conflict mineral reports also include a description of "products contracted to be manufactured."

The SEC's brief is due on March 1st and final briefs are due near the end of March. Amnesty International has indicated that it intends to file an amicus brief in support of the SEC. As we describe in this [memo](#), Form SD for inclusion of the conflict minerals disclosures is required to be filed beginning May 31, 2014.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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