



INVESTOR ALLIANCE  
FOR HUMAN RIGHTS

## Investor Expectations on Conflict Mineral Reporting

The undersigned 47 investors and investor groups with \$1.2 trillion dollars in assets under management wish to issue a clear statement to our portfolio companies to reinforce that we expect all companies that fall under the scope of the Securities and Exchange Commission (SEC) Conflict Minerals Rule to file thorough annual reports in accordance with the law.

As fiduciaries, with a long-term view of capital appreciation, assessing and integrating environmental, social, and governance (ESG) data into our investment decision-making process is necessary and prudent. Responsible management of global supply chain risks is material to investors, especially when the illicit trade in "conflict minerals"<sup>1</sup>—that fund the continuing violence in the Democratic Republic of Congo (DRC)—is concerned. As a result, investors have spoken out in support of the development and implementation of Dodd Frank Section 1502 and through engagement encourage companies to disclose.<sup>2</sup>

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

- Assess social (i.e., human rights<sup>3</sup>) and reputational risks in a company's supply chain.
- Assess a company's systems and governance structures to mitigate long-term risks related to the supply of minerals, including in relation to liability and other material risks.
- Compare company performance and management systems to mitigate risks of sourcing from or contributing to conflict.
- Provide regulatory certainty to enable companies to contribute to and prioritize the importance of developing community based and durable systems to identify and mitigate risks.
- Make more informed investment decisions and inform engagement priorities.

We regret that there has been some uncertainty about the status and necessity of the reporting requirements. In early 2017, then-Acting SEC Chairman Michael Piwowar made a statement indicating he found it "difficult to conceive of a circumstance that would counsel in favor of enforcing Item 1.01(c)

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<sup>1</sup> Tin, tungsten, tantalum, and gold from eastern DRC.

<sup>2</sup> In March 2017, 127 investors and investor groups with over \$4.8 trillion in assets under management (AUM) wrote to Mr. Michael S. Piwowar to express continued support for Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the U.S. Securities and Exchange Commission's Conflict Minerals Rule [https://www.iccr.org/sites/default/files/resources\\_attachments/conflictmineralsrulesection1502investorstatement.pdf](https://www.iccr.org/sites/default/files/resources_attachments/conflictmineralsrulesection1502investorstatement.pdf). This action was followed in December 2017 by a letter to Congress on behalf of 107 institutional investors representing over \$2.2 trillion dollars in AUM requesting that any language that would limit the Securities and Exchange Commission's (SEC) ability to implement the Conflict Minerals reporting requirements of Dodd Frank §1502 in the 2018 appropriations bills or continuing resolutions be rejected: [https://www.iccr.org/sites/default/files/resources\\_attachments/investor\\_letter\\_on\\_1502-conflict\\_minerals\\_011218.pdf](https://www.iccr.org/sites/default/files/resources_attachments/investor_letter_on_1502-conflict_minerals_011218.pdf)

<sup>3</sup> In line with the UN Guiding Principles on Business and Human Rights, which establish that corporations have a responsibility to perform and report on human rights due diligence:

[http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

of Form SD.”<sup>4</sup> The Division of Corporation Finance echoed this assertion in a similar statement shortly thereafter.<sup>5</sup> These statements introduced uncertainty about enforcement of the Rule from a public standpoint. However, they do not provide companies with any formal - much less legal - avenue to neglect the due diligence reporting requirements outlined under Item 1.01(c), including submitting an annual Conflict Minerals Report.

While the April 2017 judgement from the U.S. District Court for the District of Columbia prevents the SEC from enforcing a narrow piece of the rule related to making an explicit determination of whether or not an issuer’s products have been found to be “DRC conflict free”<sup>6</sup>, it leaves the rest of the law and reporting requirements intact.

An assertion from Commissioner Piwowar that the primary function of the due diligence and chain of custody requirements is to facilitate an unconstitutional disclosure requirement is not only an unfounded extrapolation of the District Court ruling, it is in direct contradiction to previous SEC guidance and the intent of Congress in making the law. For example, SEC guidance has instructed companies to perform and report on the full due diligence measures outlined in Item 1.01(c)<sup>7</sup> even during the two-year grace period provided in the final 2012 rulemaking, when companies were permitted to forego making a “DRC conflict free” determination. Item 1.01(c) outlines the core framework for determining whether or not the minerals in companies’ supply chains are funding armed conflict in the DRC, which, beyond the obvious human rights implications, is a significant indication of supply chain risk more broadly – a risk that materially impacts our investment decisions.

We were disappointed that in analyzing the RY2016 filings, we found more than a dozen examples of companies that explicitly noted in their Forms SD that they were electing not to submit the information required under Item 1.01(c), as a direct response to the statements from Commissioner Piwowar and the Division of Corporation Finance,<sup>8</sup> demonstrating that this statement has created at minimum confusion among companies, and at worst, has given the impression that the SEC will not enforce the law. This has resulted in a lack of consistent compliance among covered companies and deprives investors of the valuable information provided to us under this regulation.

We expect companies to file complete and thorough reporting - including Item 1.01(c) disclosures and Conflict Mineral Reports where applicable - in accordance with the requirements of the law.

Regardless of whether the SEC chooses to fulfill its obligations to enforce the Rule, as investors we will consider all public and legal options available to us to do so. Not only do companies and investors benefit from responsible management and sourcing of raw materials, but we all indirectly contribute to a

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<sup>4</sup> <https://www.sec.gov/news/public-statement/piwowar-statement-court-decision-conflict-minerals-rule>

<sup>5</sup> <https://www.sec.gov/news/public-statement/corpfin-updated-statement-court-decision-conflict-minerals-rule>

<sup>6</sup> See Nat’l Ass’n of Mfrs., et al. v. SEC, No. 13-CF-000635 (D.D.C. Apr.3, 2017) (finding that the SEC’s conflict minerals rule violated companies’ First Amendment rights by compelling them to make an explicit determination of whether products are “DRC Conflict Free”).

<sup>7</sup> <https://www.sec.gov/divisions/corpfin/guidance/conflictminerals-faq.htm#q1>

<sup>8</sup> Oxford Industries, Inc.; The Southern Company; MCBC Holdings, Inc.; HD Supply Holdings, Inc.; Kirby Corporation; Mobileye N.V.; Air T, Inc.; General Dynamics Corporation; Barnes & Noble, Inc.; Benchmark Electronics, Inc.; Wireless Telecom Group, Inc.; Shire plc; WSI Industries, Inc.; Clearfield, Inc.

peaceful, prosperous, and stable conflict-free minerals trade in the DRC region, thereby further advancing respect for human rights in the global supply chains of U.S. companies.

Signatories:

Adrian Dominican Sisters, Portfolio Advisory Board	NorthStar Asset Management, Inc.
Aviva Investors	Northwest Coalition for Responsible Investment
Conference on Corporate Responsibility Indiana and Michigan	Region VI Coalition for Responsible Investment
Congregation of Holy Cross Moreau Province	Robeco
Congregation of Sisters of St Agnes	Seventh Generation Interfaith Coalition for Responsible Investment
Congregation of the Sisters of the Holy Names of Jesus and Mary.	Sisters of Bon Secours USA
Dana Investment Advisors	Sisters of Providence - MJP
Dominican Sisters ~ Grand Rapids	Sisters of St Francis Dubuque, IA
Dominican Sisters of Hope	Sisters of St. Dominic of Blauvelt, New York
Dreilinden gGmbH	Sisters of St. Dominic/Racine Dominicans
Epic Capital Wealth Management	Sisters of St. Francis Charitable Trust, Dubuque
Everence and the Praxis Mutual Funds	Sisters of St. Francis of Philadelphia
Friends Fiduciary Corporation	Sisters of St. Joseph of Boston
Greenvest	Sisters of the Good Shepherd
Hermes	Sisters of the Holy Names US-ON Province
Impact Investors	Sisters of the Presentation of the Blessed Virgin Mary, New Windsor, NY
JLens	Skye Advisors
Maryknoll Sisters	Three Corners Capital
Mennonite Education Agency	Trillium Asset Management
Mercy Investment Services, Inc.	Tri-State Coalition for Responsible Investment
Natural Investments	Ursuline Sisters of Tildonk, U.S. Province
NEI Investments	Ursulines of the Roman Union - Eastern Province
Newground Social Investment	Veris Wealth Partners
	Zevin Asset Management