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United States Government Accountability Office
Washington, DC 20548

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April 29, 2013

The Honorable Tim Johnson
Chairman
The Honorable Michael D. Crapo
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Jeb Hensarling
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Conflict Minerals*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (Commission), entitled “Conflict Minerals” (RIN: 3235-AK84). Our records show that we received the rule on August 23, 2012. It was published in the *Federal Register* as a final rule on September 12, 2012. 77 Fed. Reg. 56,274.¹

The final rule implements section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to the use of conflict minerals.² Specifically, section 1502 and this rule require issuers with conflict minerals that are necessary to the functionality or production of a product manufactured by such person to disclose

¹ The Congressional Review Act requires GAO to provide our major rule reports to the committees of jurisdiction by the end of 15 days after the submission or publication date. 5 U.S.C. § 801(a)(2)(A). In conjunction with our practice of conducting outreach to agencies when we believe a rule has not been submitted, we discovered that the rule was actually received internally on August 23, 2012. Consequently, our report should have been issued by the end of 15 days after the September 12, 2012, publication date.

² Pub. L. No. 111-203, § 1502, 124 Stat. 1376, 2213–2218 (2010).

annually whether any of those minerals originated in the Democratic Republic of the Congo (DRC) or an adjoining country. If an issuer's conflict minerals originated in those countries, the issuer must submit a report to the Commission that includes a description of the measures it took to exercise due diligence on the conflict minerals' source and chain of custody. The measures taken to exercise due diligence must include an independent private sector audit of the report. The issuer submitting the report must also identify the auditor and certify the audit. In addition, the report must include a description of the products manufactured or contracted to be manufactured that are not "DRC conflict free," the facilities used to process the conflict minerals, the country of origin of the conflict minerals, and the efforts to determine the mine or location of origin. Lastly, the information disclosed by the issuer must be available to the public on the internet.

Enclosed is our assessment of the Commission's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Commission complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Elizabeth M. Murphy
Secretary, Securities and
and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"CONFLICT MINERALS"
(RIN: 3235-AK84)

(i) Cost-benefit analysis

The Securities and Exchange Commission (the Commission) considered the costs and benefits of this final rule. The Commission noted that many of the economic effects of this rule stem from the statutory mandate, and therefore its discussion of the costs and benefits addresses both the costs and benefits resulting from the statute and the Commission's exercise of discretion. The Commission noted that Congress intended the statutory mandate to decrease conflict and violence in the Democratic Republic of the Congo (DRC), particularly sexual- and gender-based violence, and, more generally, promote peace and security by reducing the amount of money provided to armed groups engaged in conflict in the DRC. The Commission observed that these objectives will not necessarily generate measurable, direct economic benefits to investors or issuers. After reviewing the comments, the Commission concluded that the initial cost of complying with the statutory requirement as implemented by this rule will be approximately \$3 billion to \$4 billion and the annual cost of ongoing compliance will be between \$207 million and \$609 million.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Commission prepared a Final Regulatory Flexibility Act Analysis for this final rule. The analysis included a discussion of (1) the reasons for, and objectives of, the final rule; (2) significant issues raised by public comment, (3) small entities subject to the final rule; (4) reporting, recordkeeping, and other compliance requirements; and (5) agency action to minimize effect on small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Commission is not subject to the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On December 15, 2010, the Commission published a notice of proposed rulemaking. 75 Fed. Reg. 80,948. On January 28, 2011, the Commission extended the comment period for the proposed rule. 76 Fed. Reg. 6110. The Commission also held a public roundtable on October 18, 2011, at which invited participants, including investors, affected issuers, human rights organizations, and other stakeholders, discussed their views and provided input on issues related to the rulemaking. The Commission received approximately 420 individual comment letters in response to the proposed rules, with approximately 145 of those letters being received after the roundtable, and over 40 letters regarding the statutory provision prior to the proposed rules. The Commission also received approximately 13,400 form letters of which approximately 9,700 requested some specific requirements in the final rule, and two petitions supporting the proposed amendments with an aggregate of over 25,000 signatures. The comment letters came from corporations, professional associations, human rights and public policy groups, bar associations, auditors, institutional investors, investment firms, United States and foreign government officials, and other interested parties and stakeholders. The Commission addressed comments in the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The Commission determined that this final rule contains an information collection requirement under the Act. The title of this information collection requirement is "Form SD" and it has been submitted to the Office of Management and Budget for review. The Commission estimates that the number of annual responses will be 5,994 with a total burden of 2,225,273 hours for a cost of \$1,178,378,167.

Statutory authorization for the rule

The Commission promulgated this rule under the authority of sections 3(b), 12, 13, 15(d), 23(a), and 36 of the Securities Exchange Act of 1934, as amended. 15 U.S.C. §§ 78c(b), 78l, 78m, 78o(d), 78w(a), 78mm.

Executive Order Nos. 12,866 and 13,563 (Regulatory Planning and Review)

As an independent regulatory agency, the Commission is not subject to the review requirements of these Orders.