

Presidential Memorandum: Suspension of the Conflict Minerals Rule

EXPLANATORY STATEMENT

Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010¹ (the Dodd-Frank Act) amended the Exchange Act to require the Securities and Exchange Commission to promulgate a rule requiring that companies that file reports with the SEC undertake due diligence to determine whether any materials in the products they manufacture include conflict minerals that originated in the Democratic Republic of the Congo (DRC) or an adjoining country. In 2012, the Commission adopted Rule 13p-1 (the Conflict Minerals Rule).² Section 1502 of the Dodd-Frank Act and the Conflict Minerals Rule were intended to discourage public companies from using those materials in their products. Backers of the legislation hoped it would thereby eliminate a source of financing for armed groups in the Congo involved in human rights violations.

While the Conflict Minerals Rule has discourage some American companies from purchasing materials sourced in the DRC and adjoining countries, there have been both positive and negative unintended consequences, including some job loss and an increase in the profits of certified *conflict-free* minerals as a result of the Conflict Minerals Rule. In addition to lost livelihoods associated with the Conflict Minerals Rule, the SEC also estimated in 2014 that American companies would be forced to incur upfront compliance costs of \$3 to \$4 billion, with \$200 million per year thereafter.

To respond to these unintended consequences, a more effective means of addressing the problems of the DRC and adjoining countries would be a targeted approach that focuses on specific companies known to be engaging in illegal activities that contribute to the financing of armed groups violating human rights abuses in Central Africa. Section 1502(b) of the Dodd-Frank Act permits the President of the United States to order the Commission to temporarily waive the requirements of the Conflict Minerals Rule for a period of up to two years upon a reasoned determination that the waiver is in the national security interest of the United States. During this two-year waiver period, the President will immediately direct the Secretaries of State and Treasury to propose an alternative plan utilizing existing and proposed authorities to address such problems in the DRC and adjoining countries. The proposal should take a targeted approach that focuses on breaking the link between commodities and armed groups in the DRC and adjoining countries.

¹ Pub. L. No. 111-203, 124 Stat. 1376, 2213-18.

² Conflict Minerals, 77 Fed. Reg. 56, 274 (Sept. 12, 2012), codified at 17 C.F.R. § 240.13p-1.

THE WHITE HOUSE
WASHINGTON

February __, 2017

MEMORANDUM

MEMORANDUM FOR THE SECURITIES AND EXCHANGE COMMISSION

SUBJECT: Suspension of the Conflict Minerals Rule

By the authority vested in me as President by the Constitution and laws of the United States of America, and in particular section 13(p)(3) of the Exchange Act, 15 U.S.C. 78m(p)(3), it is hereby ordered as follows:

Section 1. Policy. Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act) amended the Exchange Act to require the Securities and Exchange Commission (the Commission) to promulgate a rule requiring that companies that file reports with the SEC undertake due diligence to determine whether any materials in the products they sell include minerals mined in the Democratic Republic of the Congo or an adjoining country. In 2012, the Commission adopted Rule 13p-1 (the Conflict Minerals Rule) pursuant to this requirement. The disclosure regime for the use of minerals sourced in the Democratic Republic of the Congo, as reflected in the Conflict Minerals Rule, was originally intended to address a humanitarian crisis in the region by limiting a means of financing the ongoing conflict. Mounting evidence shows that the disclosure requirements contained in the Conflict Minerals Rule have instead caused harm to some parties in the Democratic Republic of the Congo and have thereby contributed to instability in the region and threatened the national security interest of the United States.

This Executive Order recognizes that humanitarian missions play an important role in the President's responsibility to defend the national security interests of the United States. This order requires the Commission to institute a two-year waiver of Rule 13p-1 and all other reporting and disclosure requirements promulgated by the Commission pursuant to Section 1502 of the Dodd-Frank Act and Section 13(p) of the Exchange Act.

Sec. 2. Waiver of the Conflict Minerals Rule. (a) Under Section 13(p)(3) of the Securities Exchange Act, codified at 15 U.S.C. 78m(p)(3), the Commission shall temporarily waive the requirements of the Conflict Minerals Rule if the President transmits to the Commission a

determination that it is in the national security interest of the United States to waive the rule, and includes “the reasons therefor”.

Pursuant to 15 U.S.C. 78m(p)(3), it is my determination that it is in the national security interests of the United States to waive the requirements of the Conflict Minerals Rule for the reasons set forth in Section 1 of this Order. The Commission shall therefore waive the requirements of the Conflict Minerals Rule from the earlier of two years from the date of this Order or until such time as the Commission has proposed a rule that I determine is not contrary to the national security interests of the United States.

Sec. 3. Secretaries’ Plan. The Secretary of State and the Secretary of the Treasury shall propose to the President a plan for addressing human rights violations and funding of armed groups in the Democratic Republic of the Congo or an adjoining country. The plan could include targeting persons and entities engaged in violations of law and negative human rights impacts, consistent with Section 13 of the Exchange Act. The Secretaries shall submit their plan to the President within 180 days of the date of this Order.

Sec. 4. Duration. This memorandum shall remain in effect for a period of two years from the date of this memorandum.

Sec 5. General Provisions. (a) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect (i) the authority granted by law to any executive department or agency or any head thereof, or (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) The memorandum does not purport to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States of America, its departments, agencies, officers, employees, or agents, or any other person.

DONALD J. TRUMP