

July 2012

# CONFLICT MINERALS DISCLOSURE RULE

## SEC's Actions and Stakeholder- Developed Initiatives



## Why GAO Did This Study

In eastern DRC, armed groups continue to commit severe human rights abuses and profit from exploitation of minerals and other trades. In 2010, Congress included a provision in the Dodd-Frank Wall Street Reform and Consumer Protection Act to address the trade of conflict minerals—tin, tantalum, tungsten, and gold. Section 1502(b) of the act requires SEC to issue a disclosure rule for companies using these minerals in their products. The act also requires GAO to assess the rule's effectiveness and the rate of sexual violence in war-torn areas of DRC and neighboring countries.

Since a rule has not been issued, this report examines (1) steps SEC has taken toward issuing a conflict minerals disclosure rule; and (2) stakeholder-developed initiatives that may help covered companies comply with the anticipated rule. This report also examines (3) any additional information available on the rate of sexual violence in eastern DRC and neighboring countries since GAO's 2011 report on that subject.

GAO reviewed and analyzed reports and documents from SEC, other U.S. agencies, industry associations and other nongovernmental stakeholders; and interviewed representatives from those organizations.

## What GAO Recommends

GAO recommends that the Chairman of SEC identify remaining steps and associated time frames to issue a final rule. SEC neither agreed nor disagreed with the recommendation, but noted that it will expedite the completion of its rule making to provide certainty.

View [GAO-12-763](#). For more information, contact Michael J. Courts at (202) 512-8980 or [courtsm@gao.gov](mailto:courtsm@gao.gov).

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## SEC's Actions and Stakeholder-Developed Initiatives

### What GAO Found

The Securities and Exchange Commission (SEC) has taken some steps toward developing a conflict minerals disclosure rule, but it has not issued a final rule. For example, SEC published a proposed rule in December 2010 and has gathered and reviewed extensive input from external stakeholders through comment letters and meetings. SEC has also announced, on several occasions, new target dates for the publication of a final rule, as shown in the table below. In July 2012, SEC announced that the Commission will hold an open meeting in August 2012 to consider whether to adopt a final rule. According to SEC officials, various factors have caused delays in finalizing the rule beyond the April 2011 deadline stipulated in the act, including the intensity of input from stakeholders and the public; the amount of time required to review this input; and the need to conduct a thorough economic analysis for rule making.

**SEC Announcements of Target Publication Dates for Final Conflict Minerals Disclosure Rule**

Date of announcement	New target date for publication of final rule
April 2011	August 2011-December 2011
November 2011	November 2011-December 2011
Mid-December 2011	December 2011
End of December 2011	January 2012-June 2012

Source: SEC.

Various stakeholders have developed initiatives that may help covered companies comply with the anticipated rule, but some initiatives have been hindered by SEC's delay in issuing a final rule. Industry associations, multilateral organizations, and other stakeholders have developed global and in-region sourcing initiatives, which include the development of guidance documents, audit protocols, and in-region sourcing systems. These initiatives may support companies' efforts to conduct due diligence and to identify and responsibly source conflict minerals. In the absence of SEC's final rule, however, stakeholders note that uncertainty regarding SEC's reporting and due diligence requirements has complicated their efforts to expand and harmonize their initiatives. For example, in the absence of a final rule, one initiative is facing difficulty engaging additional participants, while stakeholders' efforts to harmonize two initiatives have been hindered.

Little additional information on the rate of sexual violence in eastern Democratic Republic of the Congo (DRC) and neighboring countries has become available since GAO's 2011 report on that subject. For example, only one population-based survey has been published on sexual violence in Rwanda, and it reports that 22 percent of women ages 15-49 have experienced sexual violence there in their lifetimes. No additional surveys have been conducted in eastern DRC; however, one organization is currently conducting a survey and another is planning to conduct a survey there in 2012.

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## Abbreviations

BGR	German Federal Institute for Geosciences and Natural Resources
DHS	Demographic and Health Survey
DRC	Democratic Republic of the Congo
EICC	Electronic Industry Citizenship Coalition
G-8	Group of 8
GeSI	Global e-Sustainability Initiative
ICGLR	International Conference on the Great Lakes Region
iTSCi	ITRI Tin Supply Chain Initiative
LBMA	London Bullion Market Association
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
NGO	nongovernmental organization
OECD	Organisation for Economic Co-operation and Development
PPA	Public-Private Alliance for Responsible Minerals Trade
RJC	Responsible Jewellery Council
SEC	Securities and Exchange Commission
UNSC	United Nations Security Council
UNGoE	United Nations Group of Experts
USAID	United States Agency for International Development
WGC	World Gold Council

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United States Government Accountability Office  
Washington, DC 20548

July 16, 2012

Congressional Committees:

The eastern portion of the Democratic Republic of the Congo (DRC) has long been the site of one of the world's worst humanitarian crises, and violence there continues. Large numbers of civilians in war-torn areas of the DRC have been the victims of horrific sexual violence, including rape, mutilation, and sexual slavery carried out by armed groups. In addition, as we previously reported,<sup>1</sup> illegal armed groups, as well as some units of the Congolese national military, have continued to commit severe human rights abuses, including mass killings. The illegal armed groups and units of the Congolese national military committing these atrocities also profit from the illegal mining of minerals and the illicit taxation of other trades, such as charcoal and timber. Citing the continuing urgency of the human rights situation and the need to take action, in July 2010, Congress included in the Dodd-Frank Wall Street Reform and Consumer Protection Act (hereafter in this report referred to as the Dodd-Frank Act, or the Act) provisions pertaining to the trade of conflict minerals. The Act defines conflict minerals as columbite-tantalite (coltan), cassiterite, wolframite, and gold ores, or their derivatives.<sup>2</sup> When these ores are processed they yield the following metals used in industrial and other applications: tantalum, tin, tungsten, and gold, respectively. Hereafter in this report, the term "conflict minerals" will refer to either these ores or these metals. Section 1502(b) of the Act requires the Securities and Exchange Commission (SEC) to issue a conflict minerals disclosure rule (hereafter referred to as a rule) for "persons"<sup>3</sup> (hereafter referred to as covered companies) that must file reports with SEC to disclose whether necessary conflict minerals used in their products originated in the DRC or in an adjoining country and, if they

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<sup>1</sup>GAO, *The Democratic Republic of the Congo: U.S. Agencies Should Take Further Actions to Contribute to the Effective Regulation and Control of the Minerals Trade in Eastern Democratic Republic of the Congo*, [GAO-10-1030](#) (Washington, D.C.: Sept. 30, 2010).

<sup>2</sup>The Act also allows the Secretary of State to name any other mineral or its derivatives as a conflict mineral.

<sup>3</sup>While SEC has not issued a final rule, in its proposed rule it has interpreted "persons" in section 1502(b) to apply only to issuers of securities that file reports with SEC under section 13(a) or section 15(d) of the Securities Exchange Act of 1934, including domestic companies, foreign private issuers, and smaller reporting companies. See 75 Federal Register at 80951 (Dec. 23, 2010).

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did, to provide an additional report with certain disclosures.<sup>4,5</sup> The Act also requires us to report on the effectiveness of SEC's rule and on the rate of sexual violence in war-torn areas of the DRC and adjoining countries. We issued our first report on sexual violence in these areas in July 2011.<sup>6</sup>

This report examines (1) steps SEC has taken toward issuing a conflict minerals disclosure rule; (2) stakeholder-developed initiatives that may help covered companies comply with the anticipated rule; and (3) any additional information available on the rate of sexual violence in eastern DRC and neighboring countries since our 2011 report.<sup>7,8</sup>

To address the first two objectives, we reviewed and analyzed the provisions of the Securities Exchange Act of 1934 as added by section 1502(b) of the Dodd-Frank Act; documents, comment letters, and memos—including SEC's proposed rule—from SEC; documents and reports from the Department of State (State) and the United States Agency for International Development (USAID); as well as documents and reports from multilateral organizations such as the Organisation for Economic Co-operation and Development (OECD), nongovernmental organizations (NGOs), and industry associations. We interviewed officials from relevant U.S. agencies, as well as representatives from multilateral

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<sup>4</sup>The countries adjoining the DRC are Angola, Zambia, Tanzania, Burundi, Rwanda, Uganda, South Sudan, the Central African Republic, and the Republic of the Congo.

<sup>5</sup>Section 1502(b) also requires that private sector audits of conflict minerals reports submitted by covered companies to SEC be conducted in accordance with standards established by the Comptroller General of the United States. Before we started work on this report, SEC officials contacted GAO to discuss GAO's audit standards and we explained our audit standards to SEC.

<sup>6</sup>GAO, *The Democratic Republic of the Congo: Information on the Rate of Sexual Violence in War-Torn Eastern DRC and Adjoining Countries*, [GAO-11-702](#) (Washington, D.C.: July 13, 2011).

<sup>7</sup>In this report we are not reporting on the effectiveness of SEC's conflict minerals disclosure rule, as required under the Act, because SEC had not yet issued its final rule at the time of our audit. In the interim, to meet our mandated reporting time frame of July 2012 under the Act, we are reporting on steps SEC has taken toward issuing a rule and on industry and other stakeholders' initiatives that may help covered companies comply with the anticipated disclosure rule. We will report on the effectiveness of SEC's final conflict minerals disclosure rule after such a rule is issued and covered companies submit their conflict minerals disclosure reports.

<sup>8</sup>As specified in our 2011 report, we will identify any additional information available from eastern DRC and the neighboring countries of Burundi, Rwanda, and Uganda.

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organizations—including the International Conference on the Great Lakes Region (ICGLR), NGOs, consulting firms, industry associations, companies—including five smelters and one refiner encompassing all four minerals—and a gold industry expert. We traveled to the United Kingdom, France, Belgium, and Germany to interview representatives from the OECD Secretariat, foreign government officials, and representatives from foreign companies—including smelters, industry associations, and consulting firms. To address the third objective, we conducted interviews with representatives from State, USAID, the Department of Defense, relevant NGOs, and researchers, and gathered and analyzed relevant documents from these organizations, to determine if any new data on sexual violence were available. We also conducted Internet literature searches to identify new academic articles containing any additional data. See appendix I for a complete description of our scope and methodology.

We conducted this performance audit from August 2011 to July 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

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### History of the DRC: War and Instability

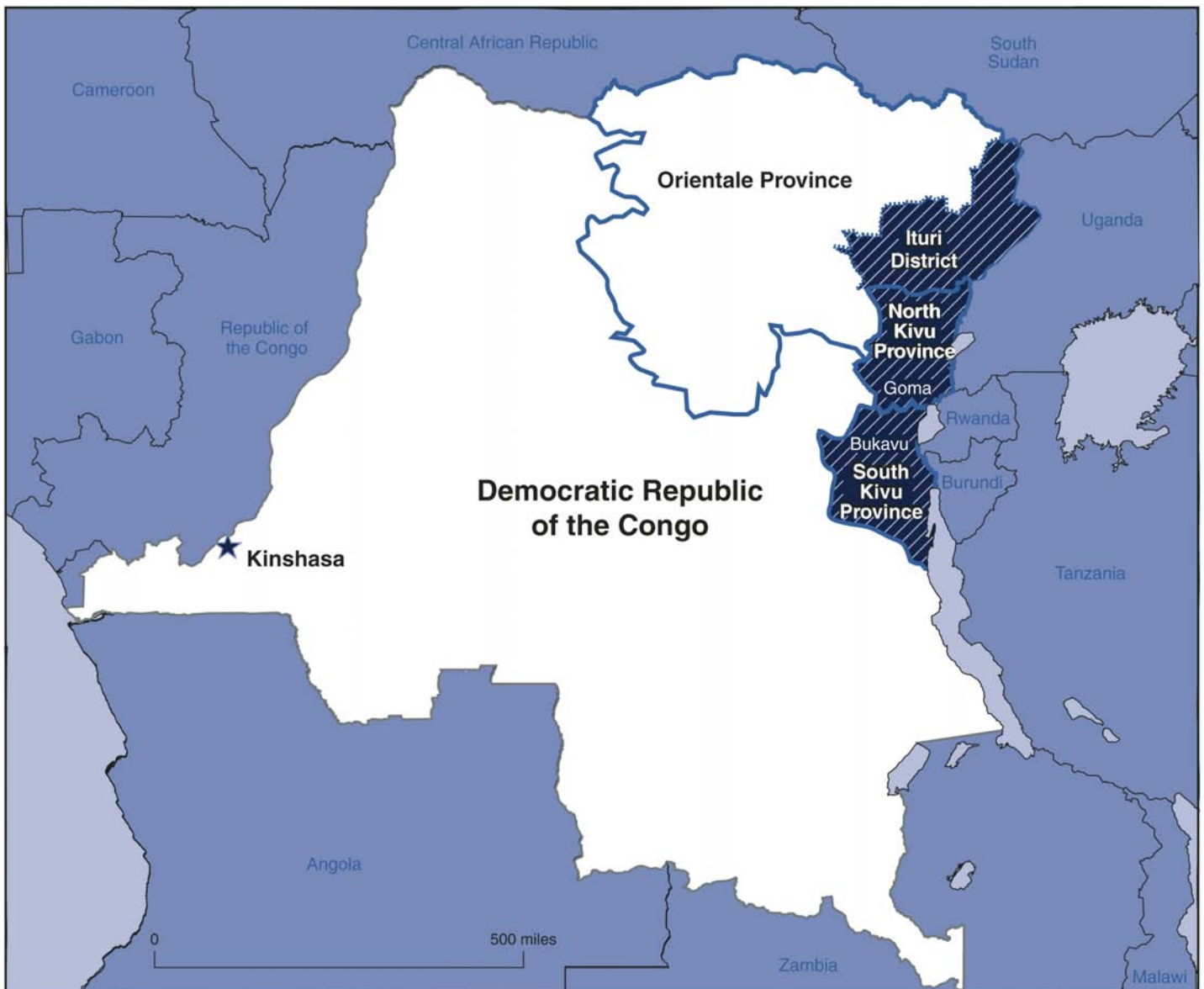
The DRC is a vast, mineral-rich nation with an estimated population of approximately 72 million to 74 million people in an area that is roughly one-quarter the size of the United States.<sup>9</sup> It was colonized in 1885 as a personal possession of Belgian King Leopold II and administered by the Belgian government starting in 1907. It achieved independence from Belgium in 1960. For almost 30 years of the postindependence period, the DRC was known as Zaire and was ruled by an authoritarian regime under Mobutu Sese Seko. Following the 1994 genocide in Rwanda, some perpetrators of the genocide and refugees fled into eastern DRC. See figure 1 for a map of the DRC and adjoining countries.

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<sup>9</sup>According to the 2012 *State Department Background Notes*, the estimated population for the DRC is 71.7 million, while the 2012 *CIA World Factbook* estimates DRC's population at 73.6 million.



**Figure 1: The DRC, including Eastern DRC (North and South Kivu Provinces and the Ituri District of Orientale Province), and Adjoining Countries**



Source: Map Resources (map).

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The Mobutu regime was toppled in 1997 by Laurent Kabila, who led a rebel group from eastern DRC with the assistance of Rwanda and Uganda. Kabila was assassinated in 2001 and leadership shifted to his son, Joseph Kabila. During the period of the senior Kabila's regime, the nation experienced a period of civil war during which numerous rebel groups, with the assistance of Rwanda, Uganda, and other neighboring countries, captured significant parts of the DRC. The war continued into the regime of Joseph Kabila, and resulted in the deaths of an estimated 5.4 million people by 2007.<sup>10</sup> As we reported in 2010, illegal armed groups and some Congolese national military units are consistently and directly involved in human rights abuses against the civilian population in eastern DRC and are involved in the exploitation of conflict minerals and other trades. We also reported that there is a culture of impunity in eastern DRC in which those who have committed human rights abuses do not face justice for the crimes they have committed. After decades of instability and war, the central government in the capital, Kinshasa, currently has little administrative capacity and control over remote regions, including eastern DRC. The long distances between the capital and eastern DRC and the rudimentary infrastructure, which make transportation and communication difficult, further limit the central government's control in eastern DRC.

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## U.S. Government Response

In 2006, Congress passed the Democratic Republic of Congo Relief, Security, and Democracy Promotion Act of 2006.<sup>11</sup> The act stated that it is the policy of the United States to engage with governments working for peace and security throughout the DRC and hold accountable individuals, entities, and countries working to destabilize the country. According to State officials, improving security in the eastern portion of the DRC is central to U.S. efforts. In August 2009, the Secretary of State traveled to the eastern portion of the DRC where, after seeing the consequences of the conflict firsthand, she called for action to assist victims of sexual violence. Recognizing that the exploitation and trade of conflict minerals originating in the DRC is helping to finance conflict, in July 2010

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<sup>10</sup>This number is based on an estimate by the International Rescue Committee, which conducted a series of population-based surveys to determine the conflict-related mortality rate in the DRC. Although we did not evaluate these studies, it should be noted that the challenges and limitations that exist generally for population-based surveys are relevant to this series of surveys and resulting estimates.

<sup>11</sup>Pub. L. No. 109-456, sec.102(14).

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Congress included a provision in section 1502(b) of the Dodd-Frank Act that requires SEC to issue a rule for covered companies to disclose whether necessary conflict minerals used in their products originated in the DRC or in an adjoining country and, if they did, to provide an additional report with certain disclosures.<sup>12</sup> The United States is the largest donor to the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO),<sup>13</sup> contributing almost one-third of MONUSCO's \$1 billion annual budget. Furthermore, in November 2011, State and USAID, in collaboration with NGOs, industry, and other governments, launched the Public-Private Alliance for Responsible Minerals Trade (PPA) to support supply chain solutions to conflict minerals challenges in the DRC and neighboring countries.<sup>14</sup>

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## Minerals Covered by the Conflict Minerals Legislation: Origins, Uses, and Supply Chains

The four conflict minerals covered by section 1502(b) of the Dodd-Frank Act are mined in various locations around the world; for example, tin is mined in China, Indonesia, Peru, Bolivia, as well as the DRC. Similarly, tantalum is reportedly mined in areas such as Australia, Brazil, Canada, and the DRC. While the majority of tungsten—reportedly 77 to 84 percent of global production from 2006 through 2009—is mined in China and a very small amount is mined in the DRC, gold is mined in many different countries, including the DRC. Our review of United States Geological Survey data on tantalum, tin, tungsten, and gold mined in the DRC showed that about 17 percent of the global tantalum supply, about 4 percent of the global tin supply, less than 1 percent of the global tungsten supply, and less than 1 percent of the global gold supply, was mined in the DRC in 2009.<sup>15</sup> However, according to a December 2011 report by

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<sup>12</sup>Section 1502(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 stat. 1376 at 2213-2218, added section 13(p) to the Securities Exchange Act of 1934, 15 U.S.C. § 78m(p).

<sup>13</sup>From its creation in 1999 to July 2010, the United Nations' deployment was called the United Nations Organization Mission in the Democratic Republic of the Congo. On July 1, 2010, the deployment's name was changed to the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo.

<sup>14</sup>PPA intends to demonstrate that it is possible to secure conflict-free minerals from the DRC and neighboring countries. PPA issued its request for proposals on June 15, 2012 and it expects to award up to \$800,000 in two or more grants to support the goals of the alliance.

<sup>15</sup>To the extent that mined minerals are misreported and/or smuggled out of the DRC, these estimates could be incorrect.

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the United Nations Group of Experts on the DRC (UNGoE),<sup>16</sup> mineral production and exports from eastern DRC have recently fallen.<sup>17</sup>

Various industries, in particular manufacturing, use these minerals in a wide variety of products and in varying amounts. Tin is utilized by a multitude of industries in tin solder, which is used to join metal pieces together.<sup>18</sup> According to company representatives, tin is also found in food packaging, in steel coatings on automobile parts, and in some plastics. According to industry association and company representatives, the majority of tantalum is used to manufacture tantalum capacitors, which enable energy storage in electronics products such as cell phones and computers.<sup>19</sup> Tungsten is used in drill bits and cutting tools and other industrial manufacturing tools; it is also the primary component of filaments in light bulbs. In addition to its use as currency and in jewelry, gold is also used by other industries, such as the electronics industry.

Figure 2 below depicts a simplified conflict minerals supply chain for all four conflict minerals. For the purposes of this report, it provides a basic overview of how conflict minerals move from the mine of origin to the end consumer.<sup>20</sup>

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<sup>16</sup>UNGoE, *Letter dated 29 November 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council*. S/2011 (S/738). Official Record. New York, 2011.

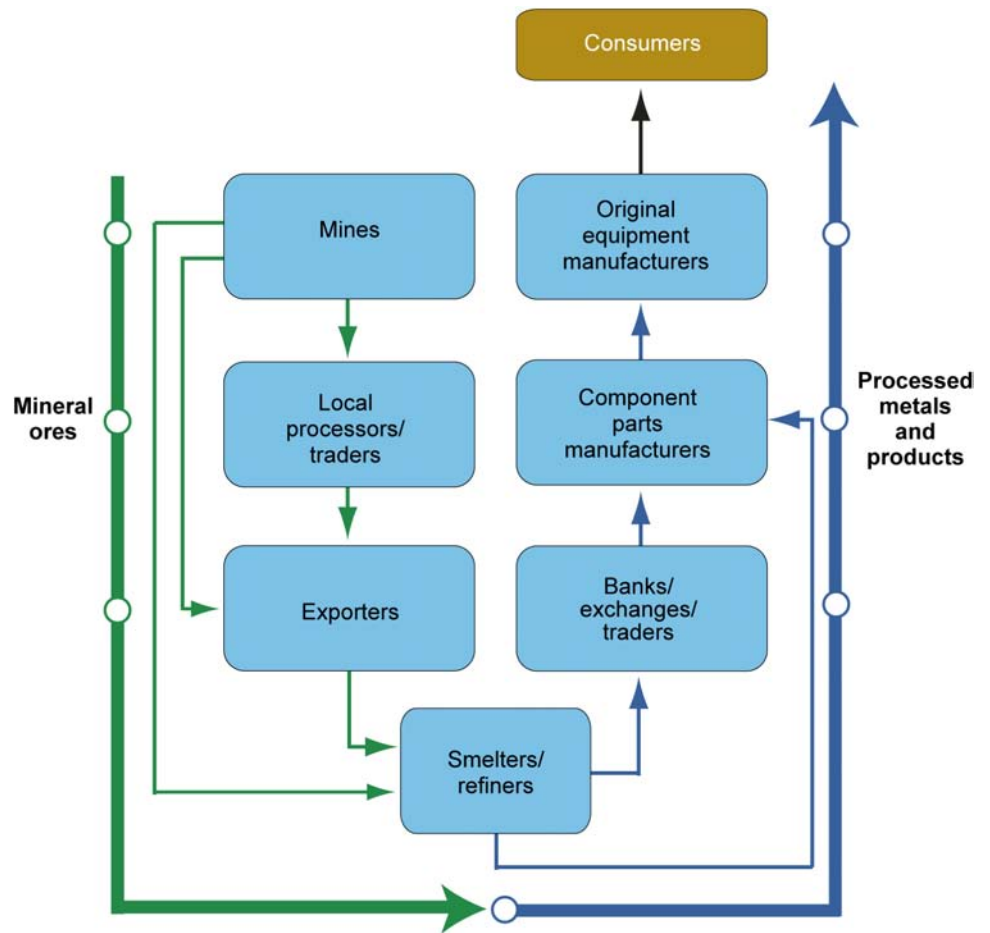
<sup>17</sup>According to an USAID official, as of late 2011 all exporters from the DRC must process their minerals to a 60 percent mineral content level, which increases the value added for the DRC.

<sup>18</sup>For example, tin solder is used to attach individual components on circuit boards.

<sup>19</sup>Tantalum is also used to produce alloy additives, which can be found in turbines in jet engines; mill and chemical products; thin films, which are used in semiconductors; and other products.

<sup>20</sup>We note, however, that the supply chain for each conflict mineral is distinct. In particular, according to gold industry representatives, the supply chain for gold is significantly different from the supply chains for tin, tantalum, and tungsten because of the following factors: (1) the role of bullion banks in the gold supply chain; (2) the role of gold in investment markets; (3) the high level of recycled gold utilized in the gold supply chain; (4) the portability and high value of small amounts of gold; (5) the role of gold as a currency and a store of value; and (6) the ease with which gold can be refined.

**Figure 2: Simplified Conflict Minerals Supply Chain**



Source: GAO analysis.

At mines throughout the world, mineral ores are extracted using mechanized industrial or artisanal mining techniques.<sup>21</sup> While industrial mining occurs in some provinces in the DRC, such as the Katanga province, artisanal mining is the dominant type of mining used in eastern

<sup>21</sup>In contrast to mechanized industrial mining, artisanal mining is a form of mining that is characterized by a lack of mechanization or capital investment.

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DRC where conflict is most prevalent.<sup>22</sup> See figure 3 for a picture of an artisanal mining site in eastern DRC.

**Figure 3: Artisanal Gold Mining Site in Eastern DRC**



Source: Pact.

For artisanal mining, the local processor or trader—an individual or company—purchases minerals directly from mine sites and typically processes or upgrades the material before selling it to the exporter, but the exporter may also purchase minerals directly from mine sites rather than going through a local processor or trader. Also, exporters may carry out further processing or upgrading before exporting the materials to a smelter or refiner. At the most basic level, smelting involves converting a mineral into a metal and refining involves purifying a metal into a higher-

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<sup>22</sup>According to a December 2011 UNGoE report, Banro, a Canadian-based mining company, began operating the first industrial gold mine in South Kivu in October 2011. In addition, according to a gold industry representative, it is anticipated that other industrial gold mining companies will invest in industrial mining operations in DRC by 2015.

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purity metal.<sup>23</sup> Although some smelters of tin, tantalum, and tungsten sell high-purity metals through traders or exchanges, smelters primarily sell high-purity tin, tantalum, and tungsten directly to component parts manufacturers. Component parts manufacturers construct individual parts—such as capacitors, engine parts, clasps for necklaces, and other items—that they sell to original equipment manufacturers. Original equipment manufacturers complete the final assembly of a product and sell their products to consumers.<sup>24,25</sup>

The supply chain for industrially mined gold, which is the dominant form of mining conducted outside of eastern DRC, is different. Industrially mined gold is typically shipped from mine sites directly to refiners, bypassing local traders and exporters. Gold refiners typically sell high-purity gold to banks, for use as a store of value, or to international exchanges and traders, where gold is bought and sold. Banks and traders may sell gold to manufacturers, including jewelry or electronics component parts manufacturers and some gold refiners sell gold directly to manufacturers.

According to industry association and company representatives, in practice, a company's supply chain for products containing tin, tantalum, tungsten, and gold can be complex and can vary considerably. For example, a company's conflict minerals supply chains may involve several different entities taking different actions to help develop products and move them through the supply chain. In addition, the supply chains for some companies' products may contain a small number of component parts, whereas the supply chains for other companies' products may contain thousands of component parts, which may be sourced from hundreds of different suppliers.

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<sup>23</sup>In this report, the term "smelter" refers to those facilities that process or refine columbite-tantalite (coltan), cassiterite, or wolframite ores and/or recycled materials into high-purity tantalum, tin, and tungsten, respectively. The term "refiner" refers to those facilities that process mined and recycled gold into high-grade gold.

<sup>24</sup>Original equipment manufacturers may also sell their products to retailers or distributors, who in turn sell the products to final end-user consumers.

<sup>25</sup>Companies operating in the first four phases of the supply chain are typically referred to as "upstream companies," while those companies operating in the remaining phases are referred to as "downstream companies." Most U.S. companies that may be affected by section 1502(b) of the Dodd-Frank Act are generally downstream companies.



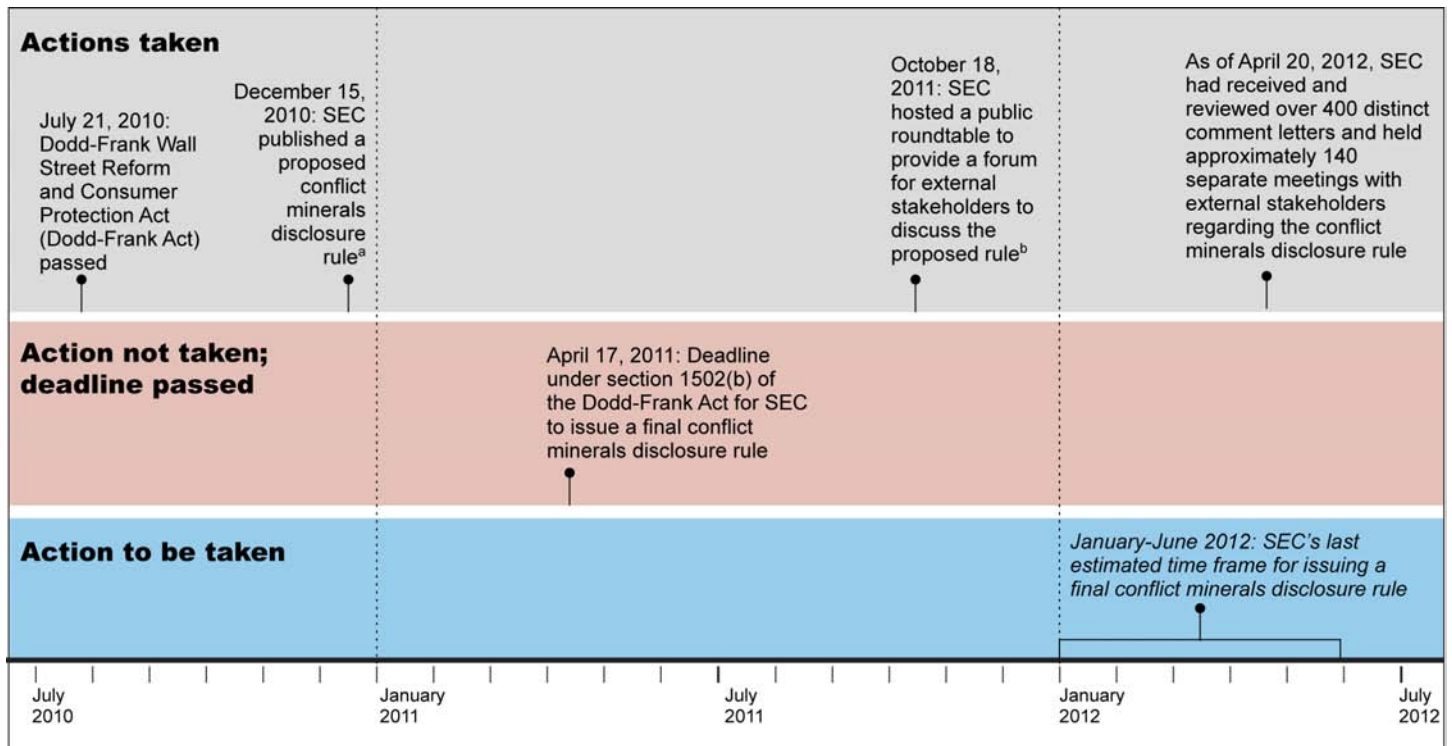
## SEC Has Taken Some Steps toward Developing a Rule but Has Delayed Issuing a Final Rule

SEC has published a proposed conflict minerals disclosure rule and has taken steps to gather input from various stakeholders. However, it has delayed issuing a final rule due to a number of factors, such as addressing intense stakeholder input and dealing with a heavy rule-making workload.

## SEC Has Published a Proposed Rule and Gathered Stakeholder Input

SEC did not meet the deadline in the Dodd-Frank Act to issue a final conflict minerals disclosure rule by April 2011, but it has taken some steps toward developing a rule, including publishing a proposed rule in December 2010 (see fig. 4).

**Figure 4: Timeline of Steps SEC Has Taken toward Developing a Rule**



Source: GAO analysis of the Dodd-Frank Act and SEC data.

<sup>a</sup>The proposed rule also extended the comment period to March 2, 2011 from the original comment due date of January 31, 2011.

<sup>b</sup>SEC's notice on the October 2011 roundtable reopened the comment period until November 1, 2011.



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According to SEC officials, following the passage of the Dodd-Frank Act in July 2010, SEC announced that it would develop a rule and called for public comments on the upcoming rule. In September 2010, SEC posted on its website an estimated issuance date for the proposed disclosure rule of between October 2010 and December 2010; at this time SEC also posted on its website an estimated issuance date for the final rule of between January 2011 and March 2011. In October 2010, SEC revised its estimated issuance date for a final rule to between April and July 2011. On December 15, 2010, SEC issued a proposed rule that reflected the complicated and technical nature of the issues it covered. The proposed rule was over 100 pages and included over 70 questions in which SEC requested feedback from the public on specific technical issues, such as whether reporting standards should apply to all conflict minerals equally, whether certain companies should be exempt from reporting, and whether there should be a *de minimis* threshold for the amount of conflict minerals used in a product.<sup>26</sup>

According to agency officials, in developing a proposed rule, SEC consulted with its internal experts and State, and gathered extensive input from external stakeholders through comment letters and meetings.<sup>27</sup> After SEC published a proposed rule in December 2010, it hosted a roundtable in October 2011 to obtain additional public input to help inform the development of a final rule. SEC officials also said that since July 2010—when it announced it intended to develop a rule—SEC has received a large and steady volume of comment letters from individuals and groups of external stakeholders, including various types of companies; industry associations; international organizations; international NGOs and local NGOs working in Central Africa; U.S. and foreign officials; private individuals; and others, with over 400 distinct comment letters posted to its website.<sup>28</sup> According to SEC officials, SEC has reviewed these

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<sup>26</sup>Examples of other issues on which the proposed rule requests feedback from the public include whether the proposed rule would present undue costs to smaller companies; whether to prescribe the type of due diligence required; and how to handle existing stockpiles of conflict minerals or minerals from recycled or scrap sources.

<sup>27</sup>As stated earlier in this report, before we started work on this report, SEC officials contacted GAO to discuss GAO's audit standards and we explained our audit standards to SEC.

<sup>28</sup>This number is as of April 20, 2012 and counts distinct comment letters posted to SEC's website. "Form" comment letters with identical content—but sent from different individuals—are counted as a single, distinct comment letter submitted to and posted by SEC.

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comment letters and is taking them into account as it develops a final rule.

SEC officials said that they have also received a large number of meeting requests from external stakeholders to further discuss issues and concerns about the proposed rule. Since July 2010, SEC Commissioners, officials, and staff have held and documented approximately 140 separate meetings with external stakeholders and posted brief memorandums of the meetings on SEC's website.<sup>29</sup> According to SEC officials, approximately 60 of those meetings involved SEC Commissioners and/or their counsels engaging directly with external stakeholders. SEC officials said that they are considering information and input gained from their meetings with stakeholders as they continue to develop a final rule.

Partly in response to the volume of comments received and meetings requested, SEC held a public roundtable in October 2011 to discuss the proposed rule. The roundtable featured panelists from companies that will likely be affected by a final rule, such as reporting companies, investment companies, audit firms (which may support covered companies in their efforts to comply with a final rule), NGOs, and affected issuers. The SEC Chairman, three other SEC Commissioners, and relevant SEC officials hosted the roundtable with U.S. Senator Richard Durbin and U.S. Congressman James McDermott (via videotape) serving as guest speakers. SEC officials said that the SEC roundtable was a helpful tool for gathering more information as it continues its work toward developing a final rule.

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<sup>29</sup>This number is as of April 20, 2012 and counts individual memorandums on meetings held with SEC officials which were posted to SEC's website.

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## SEC's Final Rule Delayed

Since SEC issued a proposed rule in December 2010, it has announced, on several occasions, new target dates for the publication of a final rule, as shown in table 1 below:

**Table 1: SEC Announcements of Target Publication Dates for Final Disclosure Rule**

Date of announcement	New target date for publication of final rule
April 2011	August 2011-December 2011
November 2011	November 2011-December 2011
Mid-December 2011	December 2011
End of December 2011	January 2012-June 2012

Source: SEC.

In its December 2011 announcement concerning the target publication date for a final rule, SEC estimated that it would issue a final rule by June 2012; however, SEC did not issue a final rule by the end of June 2012. On July 2, 2012, SEC announced that the Commission will hold an open meeting on August 22, 2012 to consider whether to adopt a final conflict minerals disclosure rule.<sup>30,31</sup> SEC officials said that various factors have caused delays in developing, modifying, and finalizing a rule, as follows:

- *Significant learning curve.* According to SEC officials, the process of developing a rule required their staff to become familiar with several areas that were relatively new to them. For example, they told us that their staff had to
  - develop contextual understanding about recent events in the DRC and adjoining countries (including learning about the relevant in-region political and economic actors, economic arrangements between these actors, and other evolving issues in these countries);

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<sup>30</sup>The Commission consists of five presidentially-appointed Commissioners, with staggered five-year terms. One of them is designated by the President as Chairman of the Commission—the agency's chief executive. It is the responsibility of the Commission to: (1) interpret federal securities law; (2) issue new rules and amend existing rules; (3) oversee the inspection of securities firms, brokers, investment advisors, and ratings agencies; (4) oversee private regulatory organizations in the securities, accounting, and auditing fields; and (5) coordinate U.S. securities regulation with federal, state, and foreign authorities.

<sup>31</sup>According to SEC, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. No. 94-409, SEC will hold an open meeting in which the Commission will discuss this and other rules.

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- learn about complex supply chains and sourcing for conflict minerals, which includes various U.S. and international companies that can range in size from very small-scale enterprises to major multinational corporations;
  - stay abreast of external stakeholder efforts to develop and implement their own responsible supply chain initiatives for conflict minerals; and
  - understand the implications of using securities law to influence the behavior of covered companies in a way that would impact the situation in central African countries.
- *Intense stakeholder interest and input.* SEC officials said that responding to intense public and stakeholder interest and input on the rule has contributed to delays. According to agency officials, the original comment period on the proposed rule closed on January 31, 2011, but at the request of a wide range of external stakeholders the Commission extended the comment period to March 2, 2011. Officials also noted that, in response to requests from some external stakeholders, the SEC hosted a roundtable on the conflict minerals disclosure rule and the Commission re-opened the comment period until November 1, 2011. SEC officials further noted that the Commission continues to receive comment letters and cited the over 400 distinct comment letters that it has received. In addition, SEC officials said that the approximately 140 meetings between the agency and external stakeholders, the complicated and technical nature of the issues in these letters and discussions, and the effort required to consider and address these issues in rule making, has also contributed to delays.
  - *Heavy rule-making workload.* SEC officials noted that Commissioners have a heavy workload, given that they produce many rules in addition to the conflict minerals disclosure rule. In April 2012, the SEC Chairman testified that under the Dodd-Frank Act, SEC is mandated to write almost 100 rules, while on average the Commission might normally write about 20 rules in a given year.
  - *Rigorous economic analysis in rule-making process.* To support their rule making, SEC officials said that they are working closely with SEC economists and legal experts to develop rigorous economic analysis, which is a complex and time-consuming process. In her April 2012 testimony statement, the SEC Chairman noted that the agency considers economic analysis to be a critical element in the rule-making process. SEC officials also noted that some of the delays in finalizing a disclosure rule have been necessary to make sure the final rule appropriately addresses significant cost concerns raised by

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external stakeholders. In her testimony statement, the SEC Chairman also pointed out that recent court decisions and communications from members of Congress have raised concerns about certain aspects of SEC's economic analysis in rule making, and that SEC staff recently developed specific guidance for staff engaged in rule making to further improve the economic analysis SEC employs in its rule making.

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## Stakeholder-Developed Initiatives May Facilitate Compliance with the Anticipated Rule, but Efforts to Improve Some Initiatives Have Been Hindered by the Absence of a Final Rule

Various stakeholders have developed and implemented initiatives that may help covered companies and their suppliers comply with the anticipated rule.<sup>32</sup> However, due to the uncertainty regarding potential due diligence and disclosure requirements stemming from SEC's delay in issuing a final rule, some stakeholders' efforts to improve their initiatives through expansion and harmonization have been hindered.<sup>33</sup>

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<sup>32</sup>According to industry association and company representatives, the anticipated disclosure rule could impact any U.S. or foreign company that is a supplier to those covered companies that produce products containing conflict minerals, because covered companies required to disclose the use of conflict minerals in their products will need to obtain conflict minerals sourcing information from their suppliers. Consequently, U.S. and foreign companies across the conflict minerals supply chains may also need to conduct due diligence and trace their supply chains to provide sourcing information to covered companies. Hence, many of the initiatives may help both covered companies comply with the anticipated disclosure rule and may help U.S. and foreign suppliers meet the information needs of their customers, which may be covered companies.

<sup>33</sup>According to State, other factors have also impacted the progress of eastern DRC-centered initiatives, including the DRC government's September 2010-March 2011 mining ban in eastern DRC and on-going security challenges throughout the Kivu provinces. State also noted that, while the issuance of SEC's final rule will have a significant impact in clarifying what is expected of covered companies, some challenges for implementing initiatives will still exist even after a final rule is issued; in particular, the development of initiatives to support the traceability of minerals along the supply chain will require continued progress once SEC's final rule is issued.

# Stakeholders Have Developed Initiatives

Although SEC has not issued a final rule, industry associations, multilateral organizations, and other stakeholders have developed and implemented initiatives that may help covered companies and their suppliers comply with the anticipated rule. Stakeholders began work on most of these initiatives before the Dodd-Frank Act was passed, but according to agency officials, stakeholders’ interest in ensuring that initiatives will be compatible with SEC’s anticipated final rule appears to have provided a substantial impetus to further develop initiatives. Stakeholder-developed initiatives—which include the development of guidance documents, audit protocols, and in-region sourcing systems—support covered companies’ efforts to (1) conduct due diligence of their conflict minerals supply chains, (2) identify the source of conflict minerals within their supply chains, and (3) responsibly source conflict minerals. Table 2 summarizes global and in-region sourcing initiatives developed by various stakeholders (see app. II for more details about each of these initiatives). The global initiatives may support covered companies’ efforts to minimize the risk of conflict minerals entering their supply chains and to identify the source of their conflict minerals across conflict minerals supply chains and around the world, while the in-region sourcing initiatives may support responsible sourcing of conflict minerals from Central Africa and the identification of specific mines of origin for those minerals.

**Table 2: Stakeholder-Developed Global and In-Region Sourcing Initiatives**

Initiative	Primary organizations involved	Purpose	Participation type	Independent audit required	Status of initiative
<b>Global initiatives</b>					
OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas	Organisation for Economic Co-Operation and Development (OECD)	Establishes practical guidance to enable companies to responsibly operate in and source from conflict areas and promotes accountability and transparency in conflict minerals supply chains.	Voluntary	Yes	Implementation phase
UNGoE Due Diligence Guidelines	United Nations Group of Experts (UNGoE) on the DRC	Establishes practical guidance to enable companies to responsibly operate in and source from conflict areas and promotes accountability and transparency in conflict minerals supply chains.	Mandatory	Yes	Implementation phase

Initiative	Primary organizations involved	Purpose	Participation type	Independent audit required	Status of initiative
Conflict-Free Smelter Program	Global e-Sustainability Initiative (GESI); Electronic Industry Citizenship Coalition (EICC)®	Verifies that the sources of conflict minerals processed by smelters are conflict-free. Enables downstream companies to identify and source from conflict-free smelters.	Voluntary	Yes	Implementation phase
WGC Conflict-Free Gold Standard and Tools	World Gold Council (WGC)	Establishes a common approach for mining companies to responsibly mine gold and demonstrates that their mining operations do not fuel conflict or the abuse of human rights.	Voluntary	Yes	Development phase
LBMA Responsible Gold Guidance	London Bullion Market Association (LBMA)	Ensures that all gold feed stock and all gold produced by refiners are conflict-free. Enables downstream companies to identify and source from conflict-free refiners.	Mandatory for LBMA accredited refiners	Yes	Development phase
RJC Chain-of-Custody Certification Program	Responsible Jewellery Council (RJC)	Supports the identification and tracking of conflict-free gold throughout gold supply chains with the transfer of chain-of-custody documentation.	Voluntary	Yes	Implementation phase
<b>In-region sourcing initiatives</b>					
ITRI Tin Supply Chain Initiative (iTSCi)	ITRI; Tantalum Niobium International Study Center; Pact; Channel Research	Supports responsible sourcing from Central Africa through the development of (1) a physical chain-of-custody system that tracks and monitors minerals from mine to smelter and (2) a due diligence system that includes independent audits and mine site and transportation route assessments.	Voluntary	Yes	Implementation phase
Certified Trading Chains	German Federal Institute for Geosciences and Natural Resources (BGR)	Supports responsible sourcing from Central Africa through the creation of a certification framework for artisanal mining sites.	Voluntary	Yes	Implementation phase
ICGLR's Regional Certification Mechanism	International Conference on the Great Lakes Region (ICGLR)	Establishes a certification mechanism for the mining and trading of conflict minerals from the Great Lakes Region.	Mandatory for member countries	Yes	Development phase

Source: GAO analysis of information from various sources.

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#### OECD Due Diligence Five-Step Framework

1. Establish strong company management systems
2. Identify and assess risk in the supply chain
3. Design and implement a strategy to respond to identified risks
4. Carry out independent third-party audit of supply chain due diligence at identified points in the supply chain
5. Report on supply chain due diligence

Source: OECD.

To support companies' efforts to conduct due diligence of their conflict minerals supply chains, which span the globe, OECD developed the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (hereafter referred to as OECD Due Diligence Guidance). The guidance establishes a five-step framework for detailed, risk-based due diligence,<sup>34</sup> which is intended to promote accountability and transparency in the supply chain of minerals from conflict-affected and high-risk areas. Covered companies may use the OECD Due Diligence Guidance to identify appropriate due diligence actions necessary for obtaining and disclosing conflict mineral sourcing information in accordance with the anticipated SEC rule. The guidance may also help U.S. and foreign suppliers put due diligence processes in place, which may help them generate conflict mineral sourcing information for those of their customers that are covered companies.

Other global initiatives may support covered companies' efforts to identify the source of conflict minerals. For example, the Conflict-Free Smelter Program and the LBMA Responsible Gold Guidance are initiatives designed to ensure that no minerals in the smelter or refiner supply chains have contributed to conflict through an independent audit process, and ultimately, the aim of these programs is to enable downstream companies to source conflict-free minerals. According to company and industry association representatives, the smelter or refiner represents the "choke-point" in the conflict minerals supply chain—meaning that after minerals are processed by the smelter or refiner, the origin of these minerals cannot be verified. According to GeSI, EICC, and LBMA representatives, companies that can trace their conflict minerals supply chains back to smelters or refiners certified through these programs can claim that the minerals in their products are conflict-free, which may help covered companies and their suppliers comply with the anticipated rule.

Finally, in-region sourcing initiatives that rely on chain-of-custody systems may help covered companies responsibly source conflict minerals from

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<sup>34</sup>OECD furnishes the following definition of due diligence: "Due diligence is an on-going, proactive and reactive process through which companies can ensure that they respect human rights and do not contribute to conflict. Due diligence can also help companies ensure they observe international law and comply with domestic laws, including those governing the illicit trade in minerals and United Nations sanctions. Risk-based due diligence refers to the steps companies should take to identify and address actual or potential risks in order to prevent or mitigate adverse impacts associated with their activities or sourcing decisions."



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### **Tantalum Closed-Pipe Supply Chain Systems Supported by iTSCi**

Two tantalum capacitor manufacturers, AVX and KEMET Electronics Corporation (KEMET), each developed separate closed-pipe supply chain systems (systems in which only one company has custody of the minerals throughout its supply chain) to responsibly source tantalum from Katanga Province in the DRC. To maintain the integrity of these two closed-pipe supply chain systems, tantalum is purchased directly from mine sites participating in iTSCi and shipped to smelters participating in the Conflict-Free Smelter Program; details on these two systems follow.

*Solutions for Hope:* AVX initially worked with Motorola Solutions to develop Solutions for Hope. A conflict-free smelter received the first shipment of tantalum mined through iTSCi in November 2011, and AVX shipped the first batch of conflict-free tantalum capacitors to Motorola Solutions in March 2012. Since late 2011, several other companies have agreed to purchase conflict-free material through Solutions for Hope.

*Making Africa Work:* KEMET independently developed its closed-pipe supply chain system for tantalum and recently acquired a tantalum smelting facility, which is preparing for the Conflict-Free Smelter Program compliance audit. According to company representatives, KEMET plans to manufacture conflict-free tantalum capacitors using material mined in the DRC and processed through its smelter.

Source: GAO analysis of information from AVX and KEMET.

Central Africa.<sup>35</sup> For example, to support the responsible sourcing of tin, tantalum, and tungsten from Central Africa, ITRI, a tin industry association, developed the ITRI Tin Supply Chain Initiative (iTSCi). The initiative is currently operating in Katanga—a province in southern DRC—and Rwanda, and through iTSCi ITRI and its partners created a physical chain-of-custody system for tracking and monitoring minerals from the mine to the smelter. Figure 5 shows the particular segments of the conflict minerals supply chains that specific stakeholder-developed initiatives support to ensure that the minerals are conflict-free (see app. II for more details concerning each initiative). According to ITRI and NGO representatives, iTSCi is a traceability and due diligence program that creates auditable and verifiable chains of custody for tin, tantalum, and tungsten through the (1) tagging of bagged materials and the collection of tagging data and (2) regular incident reporting and the continuous monitoring of mines and companies participating in the program.<sup>36</sup> iTSCi's traceability and due diligence program results in mineral chain-of-custody information that covered companies and their suppliers may use to meet due diligence requirements; smelters may also use the information in their efforts to comply with the Conflict-Free Smelter Program.<sup>37</sup>
















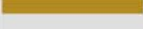

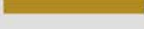

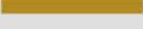

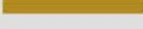

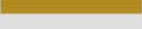

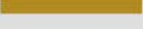

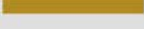

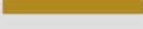

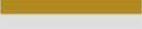






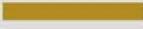
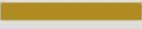
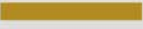
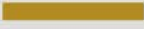
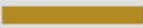
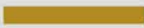
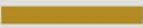

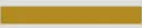

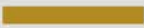





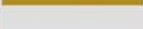

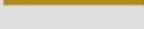

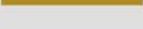






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<sup>35</sup>Chain of custody refers to the paper trail that documents the sequence of entities that have custody of minerals as they move through a supply chain.

<sup>36</sup>The initiative's traceability and due diligence program uses uniquely numbered tags to trace mineral shipments from the mine of origin to the smelter, which allows companies to confirm the actual source and trading chain of the minerals they purchase.

<sup>37</sup>As previously noted, companies that can trace their supply chains to a smelter certified through the Conflict-Free Smelter Program can claim that the minerals in their products are conflict-free.

Figure 5: Segments of Conflict Minerals Supply Chains Supported by Stakeholder-Developed Initiatives

	Mineral ores			Processed metals and products			
	Mines	Local processors/traders	Exporters	Smelters/refiners	Banks/exchanges/traders	Component parts manufacturers	Original equipment manufacturers
<b>Global Initiatives</b>							
OECD Due Diligence Guidance	 	 	 	 	 	 	 
UNGoE Due Diligence Guidelines	 	 	 	 	 	 	 
GeSI and EICC Conflict-Free Smelter Program				 	 	 	 
WGC Conflict-Free Gold Standard							
LBMA Responsible Gold Guidance							
RJC Chain-of-Custody Certification Program							
<b>In-Region Sourcing Initiatives</b>							
ITRI Tin Supply Chain Initiative							
BGR Certified Trading Chains	 	 	 				
ICGLR Regional Certification Mechanism	 	 	 				

 Tin, tantalum, and tungsten supply chains  
 Gold supply chain

Source: GAO analysis of information from various sources.

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## Efforts to Improve Some Initiatives Have Been Hindered

Some stakeholders' efforts to improve their initiatives through expansion and harmonization have been hindered by the uncertainty regarding potential due diligence and disclosure requirements stemming from SEC's delay in issuing a final rule. For example, while 12 of the approximately 25 tantalum smelting companies world-wide have been certified as conflict-free through the Conflict-Free Smelter Program to date (see fig. 6),<sup>38</sup> company representatives said GeSI and the EICC are facing challenges engaging tin and tungsten smelters in the absence of a final rule.

**Figure 6: A Processing Machine in a Certified Conflict-Free Tantalum Smelting Facility**



Source: Global Advanced Metals.

According to company representatives, GeSI and EICC representatives are finding it difficult to convince Asian—particularly Chinese—smelters to participate in the program because the electronics industry has limited

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<sup>38</sup>As of July 2012, 12 companies that represent 18 tantalum smelters had been certified as conflict-free through the Conflict-Free Smelter Program. A list of conflict-free smelters can be viewed on the CFS Program website, accessed July 5, 2012, at <http://www.conflictreesmelter.org/CFSIndicators.htm>

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leverage over Chinese smelters in the absence of a final SEC rule. In addition, according to one EICC member company representative, Chinese smelters and the Chinese government are not concerned with improving the transparency of supply chains in the absence of any business incentives. The limited participation by Chinese smelters may affect the scalability of the Conflict-Free Smelter Program as Chinese smelters processed an estimated 43 to 48 percent of the global tin supply between 2006 and 2009, and Chinese companies mined and processed an estimated 77 to 84 percent of the global tungsten supply between 2006 and 2009. To address this issue, GeSI and the EICC are working with representatives from other industries that use more tin and tungsten to expand GeSI and the EICC's leverage over and outreach efforts to tin and tungsten smelters. In addition, according to company representatives, the issuance of SEC's final rule may provide business incentives to Chinese smelters. Specifically, the issuance of a final SEC rule may result in covered companies' widespread demand for conflict mineral sourcing information from their suppliers, and the leverage applied by all impacted covered companies may create the necessary business incentives for Chinese and other foreign companies to participate in initiatives such as the Conflict-Free Smelter Program.

Some stakeholders have discussed efforts to harmonize their initiatives to further improve them, but some of these efforts have been hindered by the absence of SEC's final rule. For example, according to an industry association representative, iTSCi may experience difficulty attracting additional customers, such as smelters, and expanding the initiative until it is successfully harmonized with the Conflict-Free Smelter Program. Although GeSI, EICC, and ITRI representatives said their organizations are working together to harmonize the documentation and audit systems for the Conflict-Free Smelter Program and iTSCi, the absence of a final rule has hindered discussions to harmonize the two initiatives. As of June 2012, only one smelter purchased tin through the program, four smelters purchased tantalum, and no smelters purchased tungsten. While ITRI and its partners intend to expand iTSCi into eastern DRC, without additional customers and the resulting funding from customers, it may be challenging to implement this expansion. In addition, according to an industry association representative, the unstable security situation in eastern DRC contributes to ITRI and its partners' delay in expanding

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iTSCi to the region.<sup>39</sup> Although smelters participating in the Conflict-Free Smelter Program are allowed to accept conflict-free minerals from the DRC, an ITRI representative said that some smelters have been unwilling to purchase minerals through iTSCi's traceability and due diligence program, because the initiative has not been harmonized with the Conflict-Free Smelter Program. iTSCi is closely aligned with the OECD Due Diligence Guidance and supports continuous trading and the implementation of risk mitigation efforts when certain risks at a supplier's mine site are identified through the program. However, the Conflict-Free Smelter Program may require smelters to disengage from that supplier if the same risks are identified at the mine site, because according to GeSI and EICC representatives, the program's requirements were developed to be consistent with section 1502(b) of the Dodd-Frank Act. In particular, section 1502(b) of the Act does not discuss mitigation efforts, while the OECD Due Diligence Guidance endorses implementation of risk mitigation efforts for certain risks. In the absence of SEC's final rule, it is unclear if the initiatives, which were developed to meet different requirements, can or will be successfully harmonized.

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## Little Additional Information on the Rate of Sexual Violence in Eastern DRC and Neighboring Countries Has Become Available since GAO's 2011 Report

Since our 2011 report, one population-based survey has been conducted in Rwanda, while none have been conducted in eastern DRC, Uganda, or Burundi. Also, we found some additional case file data available on sexual violence for these areas; however, as we reported in 2011, case file data on sexual violence are not suitable for estimating a rate of sexual violence.

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<sup>39</sup>As we reported in 2010, U.S. and foreign officials and others said that lack of security, weak governance, and lack of infrastructure in eastern DRC are significant challenges that impede efforts to control the conflict minerals trade in eastern DRC. The most recent reports by UNGoE and Global Witness have confirmed that these challenges remain.

Since Our 2011 Report, One Population-Based Survey Has Been Conducted in Rwanda and None in Eastern DRC, Uganda, or Burundi

In our 2011 report on sexual violence, we found five population-based surveys that provided data on the rate of sexual violence in eastern DRC and Uganda. During our current review, we identified one new population-based survey—a 2010 Demographic and Health Survey (DHS) conducted in Rwanda that estimates that 22 percent of women ages 15 to 49 have experienced sexual violence in that country in their lifetimes.<sup>40,41</sup> Table 3 provides further details on these six surveys.

**Table 3: Population-Based Surveys That Estimate the Rate of Sexual Violence in Rwanda, Eastern DRC, and Uganda**

Author/ publication date	Dates of data collection	Time period evaluated	Survey participants	Reported experience of sexual violence (time period)	New data since GAO's 2011 report?
DHS for Rwanda	2010	Lifetime of participant	Females ages 15- 49	<ul style="list-style-type: none"> <li>During lifetimes of participants, 22 percent of females experienced sexual violence</li> </ul>	Yes
McGill University (DRC) (August 2010)	March 2010	Prior 1 year; prior 2 years; 1994- 2010	Males and females ages 18+	<ul style="list-style-type: none"> <li>During the prior 1 year, 9 percent experienced sexual violence</li> <li>During the prior 2 years, 13 percent experienced sexual violence</li> <li>For the time period 1994-2010, 33 percent experienced sexual violence</li> </ul>	No
University of California Berkeley (DRC) (August 2008)	September to December 2007	1993 through 2007	Males and females ages 18+	<ul style="list-style-type: none"> <li>16 percent experienced sexual violence</li> </ul>	No
DRC Ministry of Planning (August 2008)	January to August 2007	In 1 year prior to data collected; lifetime of participant	Females ages 15- 49	<ul style="list-style-type: none"> <li>During 1 year prior to data collected, 8 percent of females in North Kivu experienced sexual violence and 6 percent of females in South Kivu experienced sexual violence</li> <li>During lifetimes of participants, 25 percent of females in North Kivu experienced sexual violence and 18 percent of females in South Kivu experienced sexual violence</li> </ul>	No

<sup>40</sup>The report, which was released in February 2012, shows that the main perpetrator of sexual violence is often a current or former partner of the victim.

<sup>41</sup>DHS is largely supported by USAID and is conducted in over 90 countries.

Author/ publication date	Dates of data collection	Time period evaluated	Survey participants	Reported experience of sexual violence (time period)	New data since GAO's 2011 report?
University of California Berkeley (Uganda) (December 2010)	April to May 2010	Prior 1 year; 1987 to 2005	Males and females ages 18+	<ul style="list-style-type: none"> <li>During the prior 1 year, less than 0.5 percent experienced sexual violence</li> <li>For the time period 1987 to 2005, 2 percent experienced sexual violence</li> </ul>	No
Uganda Bureau of Statistics (August 2007)	May to October 2006	Lifetime of participant	Females ages 15- 54; males ages 15- 49	<ul style="list-style-type: none"> <li>During lifetimes of participants, 39 percent of females experienced sexual violence</li> <li>During lifetimes of participants, 11 percent of males experienced sexual violence</li> </ul>	No

Source: GAO 2011 report on sexual violence ([GAO-11-702](#)) and GAO analysis of DHS study.

We found no new survey data on sexual violence in eastern DRC. The authors of the McGill study, a population-based survey conducted in eastern DRC that was highlighted in our 2011 report, have no plans to conduct a follow-up survey. McGill's 2010 report was intended to serve as a baseline study, but a lack of funding has prevented another round of data collection.<sup>42</sup>

Other organizations have plans to conduct population-based surveys in eastern DRC. Researchers at ICF International told us that the next DHS survey in DRC is expected to launch in 2012 with preliminary findings expected at the end of the year; the researchers project that the final report will be issued sometime in 2013. In our 2011 report, we also discussed a population-based survey conducted in eastern DRC in 2008 by researchers at the University of California, Berkeley; those researchers are now at the Harvard Humanitarian Initiative and are conducting a follow-up survey. The results from the follow-up survey, however, will not be available until November 2012.

<sup>42</sup>One of the researchers associated with the McGill study emphasized that, even if funding was currently available, a follow-up survey would not be scheduled to be conducted until 2013 (at the earliest) because yearly analysis on the rate of sexual violence in eastern DRC does not, by itself, provide much relevant data. According to this researcher, a follow-up survey timed to assess the impact of specific programming on the ground would provide more relevant data (in this case, conducting a follow-up survey after grants to NGOs to conduct sexual violence education and outreach activities in eastern DRC is scheduled to be completed in 2013).



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## Some Additional Case File Data Has Become Available on Sexual Violence since GAO's 2011 Report

### Surveys Are More Appropriate for Estimating a Rate of Sexual Violence

In our 2011 report on sexual violence, we discussed two sources of data on sexual violence in eastern DRC and neighboring countries—population-based surveys and case files—and concluded that population-based surveys are more appropriate for estimating a rate of sexual violence. Case file data have shortcomings and biases that significantly limit their utility for estimating the rate of sexual violence. For example, case file data are not generated from a random sample; are reliant on victims seeking services to be counted, although some victims may lack access to services; and allow for the potential double counting of the same sexual violence incident in the case file data collected.

Following up on our 2011 report, we asked the United Nations Population Fund, the International Rescue Committee, and other organizations if they had any updated case file data, but representatives from the United Nations Population Fund reported that no new case file data were available and we received no response from the International Rescue Committee. Our 2011 report also referenced case file data from the 2010 Report of the Secretary-General on the implementation of Security Council resolutions 1820 and 1888, as well as State's 2009 and 2010 Human Rights Reports. In a 2012 Report of the Secretary-General that included an update on the implementation of Security Council resolutions 1820 and 1888, it was reported that, between December 2010 and November 2011, 625 sexual violence assaults committed by armed groups were documented in eastern DRC. Further, from October 2010 to August 2011, the report notes that 9,534 sexual violence victims in eastern DRC received medical and psychosocial assistance; however, as the report acknowledges, the number of assisted victims does not represent the number of new sexual violence cases during the reporting period. In addition, the 2011 *Department of State Human Rights Reports* found the following:

- In DRC, between January 2010 and September 2011, the United Nations Children's Fund reported that approximately 21,395 sexual violence victims received medical care, of which 12,829 were in eastern DRC.
- In Rwanda, 1,056 cases of adult rape were reported in 2010; the police reported that they investigated 287 cases. Of those 1,056 cases, 433 were filed in courts, 201 were dropped and 422 were pending investigation.
- In Uganda, 709 cases of rape were reported in 2010 of which 252 were tried. In November 2010, the United Nations Population Fund reported that 24 percent of women said their first sexual encounter was violent.
- In Burundi, 3,781 cases of gender-based violence were reported in 2010. In addition, according to the United Nations Children's Fund, approximately 60 percent of reported rapes were of children under age 18 and 20 percent of reported rapes were of children under age 12.

Also, the International Medical Corps reported that in 2011 it provided medical and psychosocial counseling at 60 health clinics in North and South Kivu to 1,200 sexual violence victims. As we reported in 2011, case



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file data on sexual violence are not suitable for estimating a rate of sexual violence.

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## Conclusions

As part of U.S. efforts to address sexual violence and other human rights abuses perpetrated by armed groups in the DRC, Congress enacted and the President signed into law legislation requiring that SEC issue a conflict minerals disclosure rule, which would require covered companies to disclose whether necessary conflict minerals used in their products originated in the DRC or an adjoining country and, if they did, to provide an additional report with certain disclosures. SEC has taken some important steps in its effort to issue a rule, including issuing a proposed rule that generated a large volume of public comments. However, SEC has not yet finalized and issued a rule as stipulated in the Act, largely due to the time and effort required for the Commission to understand the complexities of the four conflict minerals' supply chains, review the large volume of comment letters, and hold the numerous meetings requested by stakeholders.

The continued delay in issuing a final rule, however, has contributed to a lingering uncertainty among industry and other stakeholders who expect their actions to be guided by a final rule. Some of these industry and other stakeholders have engaged in the development of various initiatives that they hope may help covered companies comply with the anticipated rule, in part by helping foreign and domestic suppliers of those covered companies trace minerals in their supply chains. Without a final rule, it is unclear to what extent the initiatives currently being developed or implemented by industry and other stakeholders will achieve results consistent with those anticipated under the conflict minerals legislation. Moreover, in part because of the delay in the rule's issuance, many companies across the tin, tantalum, tungsten, and gold supply chains are reluctant to participate in or support the global and in-region initiatives currently being developed or implemented because they are uncertain whether or not the initiatives will align with the anticipated rule.

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## Recommendation for Executive Action

To address the delay and uncertainty in finalizing a conflict minerals disclosure rule regarding what covered companies will be required to do, we recommend that the Chairman of SEC identify the remaining steps it needs to take and the associated time frames to finalize and issue such a conflict minerals disclosure rule.

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## Agency Comments and Our Evaluation

We provided a draft of this report to SEC, State, Department of Defense, and USAID, for their review and comment. We received written comments from SEC that are reprinted in appendix III. While SEC neither agreed nor disagreed with our recommendation, in its comment letter, SEC said that it would continue its endeavor to complete the rule making expeditiously to provide certainty. It noted that, having issued a proposed rule, the required steps for adopting a final rule are determined by the majority of the Commission's five members, whose deliberations are subject to the requirements of the Government in the Sunshine Act. On July 2, 2012, SEC announced, on its website, that the conflict minerals disclosure rule would be on the agenda for consideration at the Commission's "Sunshine Act meeting" scheduled for August 22, 2012. SEC and State also provided technical comments, which we incorporated in this report as appropriate. The Department of Defense and USAID had no comments on this report. We also provided relevant portions of the draft of this report to relevant external stakeholders for their technical comments. We received technical comments from these stakeholders, which we incorporated throughout this report as appropriate. In addition, based on the technical comments we received from agencies and external stakeholders, we revised the title of our draft report to better capture the most recent developments.

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We are sending copies of this report to interested congressional committees. In addition, this report is available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact me at (202) 512-8980 or [courtsm@gao.gov](mailto:courtsm@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.



Michael J. Courts  
Acting Director  
International Affairs and Trade

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*List of Congressional Committees*

The Honorable Tim Johnson  
Chairman  
The Honorable Richard C. Shelby  
Ranking Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Max Baucus  
Chairman  
The Honorable Orrin G. Hatch  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable John F. Kerry  
Chairman  
The Honorable Richard G. Lugar  
Ranking Member  
Committee on Foreign Relations  
United States Senate

The Honorable Spencer Bachus  
Chairman  
The Honorable Barney Frank  
Ranking Member  
Committee on Financial Services  
House of Representatives

The Honorable Ileana Ros-Lehtinen  
Chairman  
The Honorable Howard L. Berman  
Ranking Member  
Committee on Foreign Affairs  
House of Representatives

The Honorable Dave Camp  
Chairman  
The Honorable Sander Levin  
Ranking Member  
Committee on Ways and Means  
House of Representatives

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The Honorable Patrick Leahy  
Chairman  
The Honorable Lindsey Graham  
Ranking Member  
Subcommittee on State, Foreign Operations,  
and Related Programs  
Committee on Appropriations  
United States Senate

The Honorable Kay Granger  
Chairman  
The Honorable Nita Lowey  
Ranking Member  
Subcommittee on State, Foreign Operations,  
and Related Programs  
Committee on Appropriations  
House of Representatives

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# Appendix I: Objectives, Scope, and Methodology

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To examine the steps the Securities and Exchange Commission (SEC) has taken to issue a conflict minerals disclosure rule, we reviewed Section 1502(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203), SEC's proposed rule, comment letters regarding the rule submitted to and posted by SEC to its website, and other documents from SEC.<sup>1</sup> In addition, we interviewed officials from SEC working on the rule and attended a public roundtable in October 2011, which was convened by SEC to discuss the proposed rule. To understand the role of the Department of State (State) in supporting SEC's efforts to develop the rule, we interviewed officials from SEC and State.

To identify and examine initiatives developed by industry, multilateral organizations, and other stakeholders that may help covered companies comply with the anticipated SEC rule, we reviewed documents from State and the United States Agency for International Development (USAID), such as press releases and a presentation; reports issued by the United Nations Group of Experts on the Democratic Republic of the Congo (UNGoE); guidance documents and reports from the Organisation for Economic Co-operation and Development (OECD); and guidance documents, reports, and presentations from the International Conference on the Great Lakes Region (ICGLR). We also reviewed numerous documents and reports by industry associations, companies, nongovernmental agencies (NGOs), and consulting firms.

Throughout the course of our review, we met and corresponded with over 40 U.S. and foreign government officials and other representatives, including representatives from ICGLR and several NGOs, to discuss the actions relevant stakeholders have taken to develop and implement initiatives that may help covered companies comply with the anticipated rule. Specifically, we met with officials from State, USAID, the United Kingdom Foreign and Commonwealth Office, the European Union, and the German Federal Institute for Geosciences and Natural Resources (BGR). We also interviewed and corresponded with representatives from 4 multilateral organizations; 11 industry associations, including

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<sup>1</sup>In this report we are not reporting on the effectiveness of SEC's conflict minerals disclosure rule, as required under the Act, because SEC had not yet issued its final rule at the time of our audit. In the interim, to meet our mandated reporting time frame of July 2012 under the Act, we are reporting on steps SEC has taken toward issuing a rule and on industry and other stakeholders' initiatives that may help covered companies comply with the anticipated disclosure rule.

manufacturing, electronic, automotive, gold, and jewelry industry associations; 10 companies, including component parts manufacturers and original equipment manufacturers from various industries; 5 smelters, including companies processing tin, tantalum, and tungsten, and 1 gold refiner; 4 NGOs; 3 consulting firms; and 1 gold industry expert. To help gather information for the review, we traveled to the United Kingdom, France, Belgium, and Germany to interview representatives from the OECD Secretariat, foreign government officials, and representatives from foreign companies—including smelters, industry associations, and consulting firms. Where company names were used in the report, we obtained permission from said companies.

In response to a requirement in the Dodd-Frank Wall Street Reform and Consumer Protection Act that GAO submit an annual report that assesses the rate of sexual violence in war-torn areas of the Democratic Republic of the Congo (DRC) and adjoining countries, we identified and assessed any additional information available on sexual violence in war-torn eastern DRC, as well as three neighboring countries that border eastern DRC—Rwanda, Uganda, and Burundi—since our 2011 report on sexual violence in these areas.<sup>2</sup> During the course of our review, we interviewed officials from State, USAID, and the Department of Defense and interviewed NGO representatives and researchers to discuss the collection of sexual violence-related data—including population-based surveys and case file data—in the DRC and adjoining countries. Specifically, we followed up with researchers and representatives from those groups we interviewed for our prior review on sexual violence rates in eastern DRC and neighboring countries, including a researcher from the Department of Defense (Office of the Assistant Secretary of Defense for Health Affairs), officials from the United Nations Population Fund, representatives from the International Rescue Committee and the Harvard Humanitarian Initiative, and others. In addition, we interviewed representatives from the International Medical Corps for this review, a group with which we had not previously met. We also conducted thorough Internet literature searches to identify new academic articles containing any additional data on sexual violence.

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<sup>2</sup>[GAO-11-702](#).

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We conducted this performance audit from August 2011 to July 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix II: Descriptions of Global and In-Region Sourcing Initiatives

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Various stakeholders have developed and implemented initiatives that may help covered companies and their suppliers comply with SEC's anticipated conflict minerals disclosure rule. Some of these initiatives can be characterized as global because they may support covered companies' efforts to identify the source of their conflict minerals across conflict minerals supply chains around the world. Other initiatives can be described as in-region sourcing initiatives because they may support responsible sourcing of conflict minerals from Central Africa and the identification of those minerals' specific mines of origin.

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## Global Initiatives

### OECD Due Diligence Guidance

In consultation with a multi-stakeholder workgroup, OECD developed the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (hereafter referred to as OECD Due Diligence Guidance) to promote accountability and transparency in conflict minerals supply chains. In July 2009, prior to the passage of the Dodd-Frank Act, Leaders of the Group of 8 (G-8)<sup>1</sup> reaffirmed their commitment to the implementation of initiatives that help reduce conflict that is fuelled by revenues from natural resources; supported the ICGLR's efforts to address illegal exploitation of natural resources; and encouraged the OECD and other multilateral organizations to work with the ICGLR to further develop practical guidance for businesses operating in countries with weak governance. In response, OECD began consulting with various stakeholders in December 2009 to learn about conflict minerals supply chains, and in April 2010, OECD created a multi-stakeholder workgroup—consisting of representatives from the UNGoE, ICGLR, NGOs, companies, industry associations, and others—to develop due diligence guidance. The workgroup endorsed the draft OECD Due Diligence guidance in November 2010 and OECD formally adopted it as an OECD Council Recommendation in May 2011. Several organizations, including some industry associations and companies, and individuals have submitted letters to SEC recommending that SEC's final rule suggest the use of the OECD Due Diligence Guidance. In addition, in December 2010 the heads of states from the 11 member countries of the ICGLR endorsed the

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<sup>1</sup>The G-8 nations include the United States, United Kingdom, France, Germany, Italy, Japan, Canada, and Russia.



OECD Due Diligence Guidance and called upon companies sourcing minerals from the Great Lakes Region to comply with the guidance; in July 2011 State endorsed the framework set forth in the guidance and encouraged companies within the conflict minerals supply chains to exercise due diligence in accordance with the framework; and an UNGoE report noted that in September 2011 the DRC Ministry of Mines issued a law requiring all mining operators in the country to comply with the guidance. Moreover, various stakeholders have shown their support for the OECD Due Diligence Guidance by aligning their own global and in-region sourcing initiatives with it.

The OECD Due Diligence Guidance and the corresponding supplements provide detailed guidance for companies operating in and sourcing minerals from conflict areas. For example, steps two and three of OECD's Five-Step Framework call for the implementation of a strategy to identify risks and support the development of risk mitigation efforts to respond to risk, when appropriate. The guidance allows a company to continue trading with suppliers during the implementation of risk mitigation efforts.<sup>2</sup> In addition to the basic five-step framework, OECD developed two supplements—the Supplement on Tin, Tantalum and Tungsten and the Supplement on Gold—to provide companies with specific guidance relevant to the conflict minerals supply chains.<sup>3</sup>

To increase awareness of and to develop emerging practices for implementing the OECD Due Diligence Guidance and the Supplement on

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<sup>2</sup>The OECD Due Diligence Guidance recommends the immediate suspension of trade with suppliers linked to any party either committing serious human rights abuses or supporting non-state armed groups; in contrast, to continue to support sourcing from the conflict-affected country, the guidance recommends the adoption of a risk management plan, rather than suspension of trade, to prevent direct or indirect support to public or private security forces when those entities are present at mining sites.

<sup>3</sup>According to representatives of the OECD Secretariat, OECD staff, in consultation with various stakeholders, identified similarities between the tin, tantalum, and tungsten supply chains, and identified significant differences between these supply chains and the supply chain for gold. In addition, they identified distinct challenges to conducting due diligence for the tin, tantalum, and tungsten supply chains versus the supply chain for gold. Hence, OECD developed one supplement for tin, tantalum, and tungsten and a separate supplement for gold. However, Annex I of the OECD Due Diligence Guidance applies to the tin, tantalum, tungsten and gold supply chains and both supplements maintain the same five-step framework. The Supplement for Tin, Tantalum, and Tungsten was adopted by the OECD Council in May 2011; the Supplement on Gold will be reviewed by the OECD Council in July 2012.

Tin, Tantalum, and Tungsten, OECD is conducting an implementation pilot project. The project began in May 2011 and includes companies spanning the entire supply chain from the mine site to the original equipment manufacturers that use some of the derivatives of conflict minerals in the products they sell. Approximately 100 companies—including mining companies, traders, smelting companies, component manufacturers, product manufacturers, original equipment manufacturers, and industry associations—are voluntarily participating in the pilot project. Participating companies are completing surveys to report on their progress and any challenges faced while implementing the OECD Due Diligence Guidance. According to representatives from the OECD Secretariat and representatives from two consulting firms, at the end of the project emerging practices will be identified to assist companies in implementing the OECD Due Diligence Guidance. OECD launched a similar implementation pilot project for the Supplement on Gold in May 2012.

The first two phases of the implementation pilot project have demonstrated positive developments in participants' efforts to implement the OECD Due Diligence Guidance. For example, recently, mining cooperatives, local traders, and other groups involved in mining activities in the DRC have started collaborating with civil society to create SAVE ACT MINE/DRC, a non-profit organization that aims to increase understanding of the OECD Due Diligence Guidance by translating the guidance into local languages and by hosting workshops. One representative from the OECD Secretariat opined that, although this is still a nascent effort, SAVE ACT MINE/DRC represents a significant development because the private sector in the DRC has begun to recognize that they are responsible for their supply chains and should take ownership over the implementation of international standards.<sup>4</sup> In addition, some original equipment manufacturers participating in the project are putting pressure on other companies within their own conflict minerals supply chains to implement due diligence standards through

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<sup>4</sup>According to a representative from the OECD Secretariat, the changing attitudes in the DRC can also be attributed to (1) the emerging demand for minerals from Central Africa that are conflict-free and (2) the steps the DRC government is taking to integrate the OECD Due Diligence Guidance into and to monitor implementation of the guidance. For example, in May 2012 the government of the DRC suspended two Chinese-owned trading companies' export licenses for failing to carry out due diligence over their operations in North Kivu.

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contractual clauses, which will support the companies' efforts to collect sourcing information from suppliers.

UNGoE Due Diligence Guidelines

United Nations Security Council (UNSC) resolution 1896 (2009) called on UNGoE to provide recommendations for due diligence guidelines for importers, processors, and consumers of minerals originating from the DRC. UNGoE participated in the OECD Due Diligence Guidance multi-stakeholder workgroup, and in a November 2010 report provided a recommendation to the UNSC that companies adopt the five-step framework for detailed due diligence that the OECD workgroup developed. UNSC resolution 1952 supported UNGoE's due diligence guidance recommendations; UNGoE's recommended due diligence guidelines are similar to and fully consistent with the OECD Due Diligence Guidance. Individuals and entities may be subject to UN sanctions for not applying the due diligence guidelines.

Conflict-Free Smelter Program

The Global e-Sustainability Initiative (GeSI) and the Electronic Industry Citizenship Coalition (EICC) have co-developed the Conflict-Free Smelter Program to verify the sources of conflict minerals processed by smelters and refiners.<sup>5,6</sup> The aim of this program is to enable companies—both covered companies and their suppliers—to source conflict-free minerals. Companies that can trace their conflict minerals supply chains back to a conflict-free smelter can claim the minerals in their products are conflict-free.

The Conflict-Free Smelter Program is a voluntary program in which smelters undergo an independent third party audit, in accordance with the OECD Due Diligence Guidance, to verify the origin of minerals processed at their facilities. GeSI and the EICC have also developed audit protocols

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<sup>5</sup>GeSI and EICC representatives began designing the concept for a smelter validation program in 2009. In April 2010, GeSI and EICC representatives presented the proposal for the Conflict-Free Smelter Program and the audit protocol for tantalum smelters.

<sup>6</sup>GeSI and the EICC also released the Conflict Minerals Reporting Template to standardize the collection of information from suppliers. This tool may reduce the burden on suppliers that may receive numerous requests for information from different customers. The template may be used by covered companies to help (1) trace their conflict minerals supply chains and (2) collect sourcing information for conflict minerals used in their products. GeSI and the EICC developed another tool, the Dashboard, to aggregate the responses companies receive from suppliers.

for the program in consultation with a number of stakeholders—including NGOs, smelters, component manufacturers, original equipment manufacturers, and industry associations within and outside the electronics industry—to ensure wide-spread support for the program.<sup>7</sup> In December 2010, the first tantalum smelter was certified conflict-free through the program after successfully completing an audit, and as of July 2012, 12 of approximately 25 tantalum smelting companies had been certified as conflict-free. As of July 2012, two tin smelting companies had been certified as conflict-free, five tungsten smelting companies had begun discussions with representatives of the program, and five gold refining companies had been certified as conflict-free through the program.<sup>8</sup>

#### World Gold Council's Conflict-Free Gold Standard and Tools

Representing top gold mining companies, the World Gold Council (WGC) is developing a global initiative to help support gold mining companies in their efforts to responsibly mine gold worldwide. For this initiative, WGC is creating the Conflict-Free Gold Standard, an assurance framework, and a toolkit, with the input from mining companies, refiners, and other relevant stakeholders. The Conflict-Free Gold Standard establishes a common approach for gold mining companies to demonstrate that the gold they extract does not fuel conflict or human rights abuses. The standard is aligned with the OECD Due Diligence Guidance,<sup>9</sup> and covers the industrial mining supply chain from the mine to the refiner. However, the standard does not cover gold from recycled sources or gold mined by artisanal miners. WGC is also developing an assurance framework, which can be used by third-party auditors to monitor mining companies' compliance with the standard, and tools to support mining companies through the audit process. According to WGC representatives, WGC

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<sup>7</sup>To be compliant with the audit protocols, smelters must be able to demonstrate that they have (1) a conflict minerals policy, (2) a mechanism for tracing goods sold back to the purchased material source, and (3) documentation verifying that the conflict minerals are from non-conflict sources.

<sup>8</sup>A list of conflict-free smelters can be viewed on the CFS Program website, accessed July 5, 2012, at <http://www.conflictreesmelter.org/CFSindicators.htm>.

<sup>9</sup>According to the OECD Due Diligence Guidance, the individual company must exercise judgment to determine if conflict exists in the country in which it conducts business. According to WGC representatives, WGC took steps to help mining companies avoid pressure from host governments that may be averse to being designated as "conflict-affected or high risk" by an individual mining company by including a requirement in the standard that a mining company rely on external sources—such as sanctions or reports from authoritative NGOs—to determine if conflict exists.

LBMA's Responsible Gold Guidance

plans to release the final standard, the assurance framework, and other tools before the end of 2012. Although the standard only covers gold mining companies, it may support certification programs at the refiner level. For example, according to gold industry representatives, the standard was developed with input from the London Bullion Market Association (LBMA), and it will support the efforts of those refiners purchasing gold from mining companies in compliance with the WGC Conflict-Free Gold Standard to comply with the LBMA Responsible Gold Guidance.

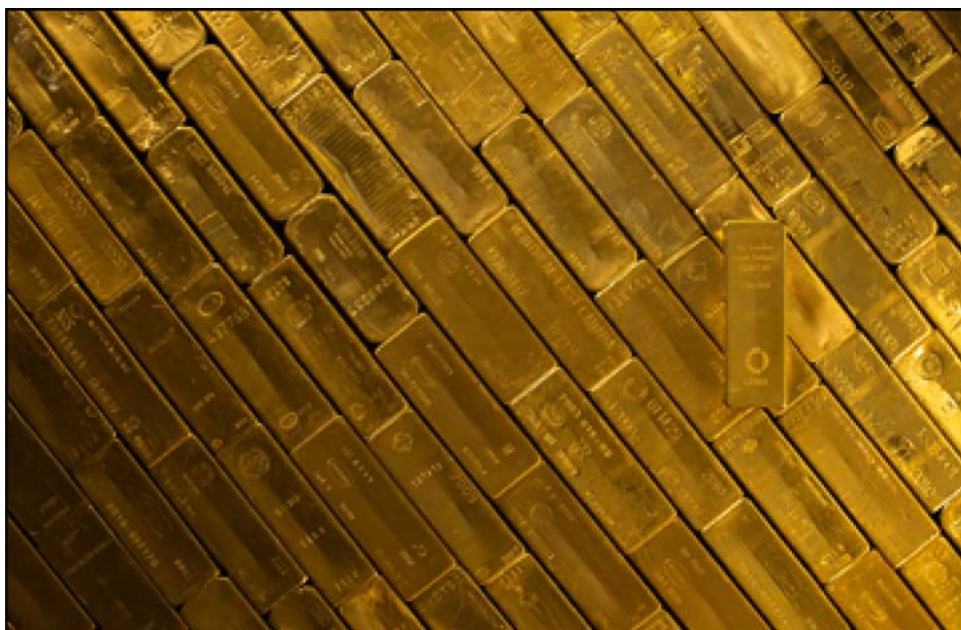
Distinct from WGC, whose standard covers the gold supply chain from mine to refiner, the LBMA has developed its own Responsible Gold Guidance to ensure that the gold refiners it accredits only purchase conflict-free gold.<sup>10</sup> In January 2012, LBMA finalized and published its guidance, which is based on the OECD Due Diligence Guidance,<sup>11</sup> and plans to develop and finalize audit protocols and other tools for use with the standard by July 2012. According to an LBMA representative, by December 2013 LBMA gold refiners will need to comply with the LBMA guidance and pass a third-party audit verifying their compliance to maintain their accreditation. Similar to the Conflict-Free Smelter Program, the goal of the LBMA initiative is to enable companies to say that the gold in their products is conflict-free if they can trace their gold supply chains to an LBMA accredited gold refiner (see fig. 7). According to industry representatives, in May 2012 LBMA, GeSI, and the EICC began the process to harmonize the two smelter and refiner certification programs to avoid duplicative efforts and any unnecessary burden on refiners.

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<sup>10</sup>LBMA is the overseer for the London Good Delivery List, a list of 63 accredited gold refiners that meet a specific standard for the quality of their refined gold and silver bars. According to LBMA representatives, most banks and exchanges will only contract with refiners on the Good Delivery List.

<sup>11</sup>The LBMA also incorporated existing anti-money laundering and "know your customer" due diligence practices into the Responsible Gold Guidance.

Figure 7: Gold Bars Produced by LBMA Accredited Refiners



Source: LBMA.

### Responsible Jewellery Council Chain-of-Custody Certification Program

The Responsible Jewellery Council (RJC)—a diamond and precious metals industry association—created a chain-of-custody certification program in March 2012 to help its member companies identify and track conflict-free gold throughout their supply chains.<sup>12,13</sup> RJC designed a certification standard and developed several tools for the program—including a certification handbook, guidance, and an assessment toolkit—in collaboration with industry associations, companies, NGOs, and independent experts. According to RJC representatives, RJC began developing the program in early 2010 to support responsible sourcing, and after the passage of the Dodd-Frank Act, RJC incorporated measures into the program to support covered companies' compliance with section 1502(b) of the Dodd-Frank Act. Conflict-free mined, recycled, and grandfathered gold is tracked through the supply chain from mine to

<sup>12</sup>The program was also launched to help its member companies identify and track the supply chains of other precious metals, such as platinum, palladium, and rhodium.

<sup>13</sup>As mentioned previously, chain of custody refers to the paper trail that documents the sequence of entities that have custody of minerals as they move through a supply chain.

end user with the use of RJC tracking records to ensure a proper chain of custody is maintained.<sup>14</sup> Participating RJC members must be independently audited to be certified, in accordance with the OECD Due Diligence Guidance, and RJC recognizes and accepts audits completed under the GeSI and EICC Conflict-Free Smelter Program, as well as WGC's and LBMA's initiatives.

Two factors may limit the efficacy of RJC's chain-of-custody certification program. First, certification under RJC's program is voluntary and companies may determine which parts of their business and which materials they want to certify. Second, companies certified under RJC's program are not prevented from sourcing from mining entities outside the program; gold purchased from a mine outside the program simply has to be segregated from gold from certified suppliers. While some refiner representatives report that segregation of gold in their facilities is difficult, several gold refiners have been certified as conflict-free through the RJC chain-of-custody certification program.

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## In-Region Sourcing Initiatives

### ITRI Tin Supply Chain Initiative (iTSCi)

ITRI, an international tin industry association, began developing the ITRI Tin Supply Chain Initiative (iTSCi) in 2008 to improve due diligence and traceability within the tin, tantalum, and tungsten supply chains. ITRI initially designed the initiative to support the responsible sourcing of tin from Central Africa, but in 2010 ITRI began working with the Tantalum Niobium International Study Center to include tantalum. At that time, the initiative was also expanded to include tungsten. iTSCi has three components: (1) a physical chain-of-custody system to track and monitor minerals from the mine to the smelter; (2) independent third-party risk assessments of mine sites, transport routes, and companies involved in mining and transport to identify and manage conflict-related risks; and (3)

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<sup>14</sup>RJC defines grandfathered gold as existing stocks of gold that existed before the chain-of-custody standard came into effect, with a reliable record demonstrating its date of ownership, extraction and/or manufacture. Grandfathered gold may be in the form of bars, ingots, coins, or similar, or within a sealed container (e.g., grain, powder, or sponge), with the refining date either permanently shown with the mark of a refiner or government mint; or verified by the refiner in accordance with a serial number or other permanent physical mark or characteristic; or determined through bank depository or inventory records.

independent third-party audits of all participants in the initiative. iTSCi helps companies comply with the OECD Due Diligence Guidance through these three components. According to an industry association representative, as of June 2012, iTSCi was being implemented at tin, tantalum, and tungsten mine sites, including approximately 1500 mine areas in the Katanga Province in the DRC and at approximately 400 mine areas in Rwanda, and the programs in both countries support approximately 45,000 artisanal miners.<sup>15, 16</sup>

Although iTSCi was started and overseen by ITRI, it was developed with input from local and national officials in the DRC and Rwanda and it is being implemented by local organizations and national officials in their countries, with support from Pact, a NGO, and Channel Research, an independent auditor. Pact manages the initiative's field operations and performs initial mine risk assessments; coordinates with DRC and Rwandan government officials and local NGOs to implement the initiative at mine sites; continuously monitors activities on the ground; and helps train government officials to build their capacity. Channel Research is in charge of conducting pre-audits, governance assessments, and company audits of the companies participating in iTSCi.

Through audits, assessments, and continuous monitoring of the initiative, ITRI and its partners identified a number of problems with current operations. For example, ITRI representatives reported a number of problems with the iTSCi system, including duplicate tags, tags appearing in the wrong places, and bag weights increasing between check points in the supply chain. ITRI began addressing these concerns in 2011 through the development of an incident reporting template that staff are using to record and report incidents. According to an iTSCi document, the new protocol will ensure a timely and consistent identification and response to incidents. According to an iTSCi report, incidents have been reported, but at a low frequency in comparison to the amount of material bagged and tagged.

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<sup>15</sup>According to a NGO representative, in addition to improving due diligence and transparency within the tin, tantalum, and tungsten supply chains, the initiative is enabling the government of the DRC to legitimately collect taxes.

<sup>16</sup>Compared to eastern DRC, Katanga is relatively conflict-free. As of June 2012, ITRI and its partners had not extended the ITRI initiative to eastern DRC, where conflict and violence persist.



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Certified Trading Chains Program and the Implementation of a National Certification and Traceability System in DRC

According to BGR representatives, since 2008 the German government's Federal Institute for Geosciences and Natural Resources (BGR) and its partners have helped build capacity within the DRC and Rwandan governments through several initiatives, including a certified trading chains program and the development of a national certification and traceability system. BGR and its partners have developed and piloted the certified trading chains program in eastern DRC and Rwanda to help the governments formalize the artisanal mining sectors (see fig. 8). BGR and its partners work with the host government and other stakeholders to develop standards by which mines are independently assessed, and the organization provides technical support for the host government to implement the program.<sup>17</sup> According to BGR representatives, BGR and its partners are currently conducting a pilot program for the certification of four mine sites in South Kivu, in eastern DRC. In Rwanda, three of the five mine sites audited between November 2008 and June 2011 have been certified through the program.<sup>18</sup> BGR representatives noted that they are planning to implement the certified trading changes program at additional mine sites in North and South Kivu in 2012. However, they also noted that the security situation in eastern DRC remains a challenge to the implementation of initiatives in the region.

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<sup>17</sup>The standards are aligned with the OECD Due Diligence Guidance. In addition, according to a BGR representative, the DRC government incorporated the standards in national legislation and the Rwandan government included the standards in a national guidance document; the standards are obligatory in DRC and voluntary in Rwanda.

<sup>18</sup>According to a BGR representative, BGR supports the process while the partner actually certifies the mine sites.

Figure 8: Artisanal Miners Panning Tin Ore at a Rwandan Mine Site



Source: © BGR.

BGR and its partners have also been helping the DRC government develop a national certification and traceability system for tin, tantalum, tungsten, and gold since 2009;<sup>19</sup> the certification system is based on the certified trading chains project. As part of the governments' efforts to develop the system, BGR and its partners are working with representatives from the DRC government and others to inspect mine sites in eastern DRC. Specifically, the mine site validation missions are joint missions supported by BGR and include representatives from the local and national governments, civil society, industry, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), and ITRI. According to BGR officials, the goal is to regularly monitor the security situation at the mine sites, as part of the government's efforts to map mining sites and armed group locations.<sup>20</sup> In June 2011 and August 2011, the mine site validation teams conducted some mine site qualification reviews; however, the DRC government published the results of the mine site qualification reviews over 8 months after the mine site validation missions occurred, limiting the public's access to timely information concerning the security situation at the mines.<sup>21</sup>

According to BGR officials, BGR and its partners' in-region sourcing initiatives provide companies that purchase minerals through the program with assurances that artisanal miners participating in the initiative produce and trade minerals in accordance with accepted standards. BGR and its partners provide these assurances by certifying mine sites and helping to build the capacity of Congolese and Rwandan government officials. In

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<sup>19</sup>The DRC's national certification system, the Certification Nationale, will enable the government to implement ICGRL's regional certification mechanism.

<sup>20</sup>Cadastre Minier—an office within the DRC Ministry of Mines—and the International Peace Information Service will conduct a comprehensive mine site qualification and cartography initiative throughout eastern DRC. In addition, MONUSCO is working with the DRC government on the Centres de Négoce initiative, an effort to establish five mineral trading centers in North and South Kivu. The project was launched in 2009 with the goal of creating choke-points where traceability procedures could be properly applied and where tin, tantalum, tungsten, and gold could be sold, bought, analyzed, and taxed. As of November 2011, MONUSCO completed construction of four of the centers and established a validation process to ensure that only conflict-free minerals will be traded at the centers.

<sup>21</sup>According to BGR representatives, the mine site validation teams will visit and conduct qualification reviews at additional mines in North and South Kivu in the coming months and the validation of mine sites in Maniema and Katanga will begin in July 2012.

### ICGLR's Regional Certification Mechanism

addition, the maps being developed by the DRC government, in conjunction with BGR and other groups, may serve as a tool for companies to determine the conflict status of a mine site when conducting due diligence.

With technical support from several NGO partners, ICGLR designed a regional chain-of-custody tracking system and standards to ensure that conflict minerals are fully traceable from the mine site to the point of export; however, the implementation of the system is only in the nascent stages and is dependent on the actions of the participating national governments. In December 2006, the heads of the 11 African states that form the ICGLR signed the Pact on Security, Stability and Development in the Great Lakes Region, which included the Protocol Against the Illegal Exploitation of Natural Resources. In accordance with the protocol, ICGLR member states agreed to put in place regional rules and monitoring mechanisms for combating the illegal exploitation of natural resources. To curb the financing of rebel groups through the illegal exploitation of natural resources, ICGLR developed and approved six tools for implementation in the Great Lakes Region.<sup>22</sup> ICGLR worked with Partnership Africa Canada to develop one of the tools, a regional certification mechanism, which was approved by the ICGLR member states in December 2010. ICGLR's regional certification mechanism may enable member countries and their mining companies to demonstrate where and under what conditions minerals were produced; through the regional certification mechanism, individual member governments are to issue ICGLR regional certificates for those mineral shipments that are in compliance with the standards of the mechanism.

Several partners support ICGLR and member countries' efforts to implement the mechanism. For example, one NGO is helping the ICGLR develop a regional database, which would house data collected at the mine site and at the point of export, to track mineral flows through the region. At this time, the development of the databases and collection of data is an ongoing process. In addition, the German International Cooperation is consulting with ICGLR as it begins to set up a regional audit committee, which will be responsible for accrediting third-party

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<sup>22</sup>The ICGLR developed the following six tools: regional certification mechanism, harmonization of national legislation, regional database on mineral flows, formalization of the artisanal mining sector, promotion of the Extractive Industry Transparency Initiative, and a whistle-blowing mechanism.

auditors and overseeing the mechanism's audit system. Partnership Africa Canada and BGR are also supporting the national authorities in Burundi with implementation of the regional certification mechanism.

According to a report by GeSI and the EICC and an ICGLR representative, ICGLR member countries are expected to harmonize their national legislation with the regional certification mechanism and develop a national certification and traceability system prior to issuing ICGLR regional certificates. According to an ICGLR representative, a report by GeSI and the EICC, and a report by the International Peace Information Service, the DRC government incorporated the ICGLR Regional Certification Manual into the national legal framework in February 2012, and Rwanda is expected to adopt similar legislation shortly.<sup>23</sup> BGR's and ITRI's initiatives support the implementation of the regional certification mechanism at the national level, because all activities undertaken through these initiatives are incorporated into the DRC and Rwandan national efforts to develop national certification and traceability systems. As of April 2012, none of the ICGLR member states had issued an ICGLR regional certificate.

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<sup>23</sup>According to the International Peace Information Service, a ministerial decree has been finalized that would integrate the regional certification mechanism into Rwanda's mining code, and it is now pending approval by the Rwandan Ministry of Mines. Certification of mines will begin after the Rwandan Ministry of Mines approves the decree.

# Appendix III: Comments from the Securities and Exchange Commission



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

June 22, 2012

Michael Courts  
Acting Director  
International Affairs and Trade  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Courts:

Thank you for the opportunity to review the Government Accountability Office's (GAO) draft report concerning the Conflict Minerals provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act). The SEC staff is separately providing you with technical comments on the draft report.

GAO prepared the draft report in response to the requirement in Section 1502 of the Act. In addition to requiring the SEC to issue rules, Section 1502 of the Act requires that not later than two years after enactment of the Act and annually thereafter, the GAO submit a report to Congress assessing the effectiveness of Exchange Act Section 13(p) as added by Section 1502(b), a description of issues encountered by the SEC in carrying out the provisions of Section 13(p), and a review of non-covered companies that have conflict minerals necessary to the functionality or production of a product manufactured by such companies. Section 1502 also requires the GAO to submit annually a report that includes an assessment of the rate of sexual- and gender-based violence in war-torn areas of the Democratic Republic of the Congo and adjoining countries. We understand that in light of the fact no final rule has been promulgated, the GAO report examines the steps the SEC has taken toward issuing a conflict minerals disclosure rule; stakeholder-developed initiatives that may help covered companies comply with the anticipated rule; and any additional information available on the rate of sexual violence in the eastern Democratic Republic of Congo.

We appreciate that the GAO acknowledged in the report the uniqueness of this rulemaking as well as all the steps the Commission and its staff have taken including extending and re-opening the comment period and holding a roundtable, all at the request of stakeholders, along with scores of meetings with various stakeholders.

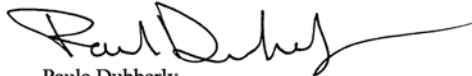
The draft GAO report recommends that if the SEC does not meet its June 2012 target issuance date, the SEC identify the remaining steps it needs to take and the associated timeframes to finalize and issue a final conflict minerals disclosure rule. The report makes these recommendations to remove uncertainty on what covered companies will be required to do under a disclosure rule.

Since the Commission has issued a proposed rule, a final rule could be adopted by a vote of a majority of the Commission, once any open issues are resolved. As a five member Commission, the required steps are subject to a determination by a majority of members, and Commission deliberations on this matter are subject to the requirements of the Government in the Sunshine Act. We also note that describing any particular steps required to finalize the rule will not remove uncertainty on what covered companies will be required to do under a final rule since the actions required will only become clear when a final rule is issued.

We appreciate the importance of completing this rulemaking and providing certainty. Please be assured that we continue to endeavor to do so expeditiously.

We appreciate the GAO's attention to this important issue and would like to thank you and your staff for the opportunity to review the GAO's draft report.

Sincerely,



Paula Dubberly  
Deputy Director  
Division of Corporation Finance

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# Appendix IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

Michael J. Courts, (202) 512-8980 or [courtsm@gao.gov](mailto:courtsm@gao.gov)

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## Staff Acknowledgments

In addition to the individual named above, Godwin Agbara, Assistant Director; Ian Ferguson; Amanda Bartine; Justin Fisher; Ernie Jackson; Debbie Chung; Debra Johnson; Fang He; Etana Finkler; and Jeremy Sebest made key contributions to this report.



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