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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

CHARLES YI, STAFF DIRECTOR
GREGG RICHARD, REPUBLICAN STAFF DIRECTOR

May 23, 2014

The Honorable Mary Jo White
Chair
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Dear Chair White:

We are writing regarding the Securities and Exchange Commission's (SEC's) decision to require companies to file disclosures and reports required under the SEC's conflict minerals rule despite pending litigation. Based on our reading of the SEC's May 2, 2014 Order, the SEC will require companies to comply with large portions of the SEC's conflicts minerals rule mandated by Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), even though the U.S. Court of Appeals for the D.C. Circuit found that a central feature of the rule violated the First Amendment. Given that the case has been remanded to a lower court for further proceedings, we believe a full stay of the rule is warranted until all legal and compliance questions have been appropriately addressed.

A full stay is also prudent given the enormous compliance costs to companies, which by the SEC's own estimates are \$3-4 billion for initial compliance and \$207-609 million per year thereafter. Forcing companies to comply with a rule - the purported benefit of which has been deemed unconstitutional - creates legal uncertainty and would be exorbitantly costly to companies and consumers. We have serious doubts about whether the Commission can or should sever any part or requirement of the rule if a court can invalidate it on a First Amendment ground or other grounds.

Additionally, we note that the SEC has provided guidance on how businesses must now compile and file conflict mineral reports. However, the guidance is vague as to the level of due diligence required by reporting companies, as well as the burdens that can be imposed on suppliers, many of whom may be small businesses.

Given these concerns, we respectfully request that you provide:

- (1) A legal explanation as to why the SEC deems it appropriate to stay, sever or modify certain requirements of the final rule and not stay the rule in its entirety pending appeal;
- (2) An economic analysis that the SEC conducted to determine the added cost of the Order as well as the guidance provided on April 29, 2014 to affected entities as compared to the costs found in the SEC's cost-benefit analysis for the final rule;
- (3) A legal explanation why the SEC believes that the new rule, as severed or partially stayed, serves the goal of the statute and why it was appropriate to put forth such a revision without public notice and comment;
- (4) Information as to whether the guidance has been put through an analysis as required under the Small Business Regulatory Enforcement Fairness Act ("SBREFA") to understand the impacts on small businesses and if not, will the SEC do so?
- (5) A timeframe for when you will provide additional clarity to the guidance provided on April 29, 2014 as to the appropriate level of due diligence required by reporting companies taking into account the burdens imposed on suppliers.

In light of the legal challenge and enormous financial and compliance burdens that this rule imposes on the market, which will inevitably be passed on to shareholders and consumers, we respectfully request that the SEC reconsider a stay of the entire rule and its requirements until all outstanding legal and compliance questions are addressed. We respectfully ask that you provide responses to the above questions as soon as possible.

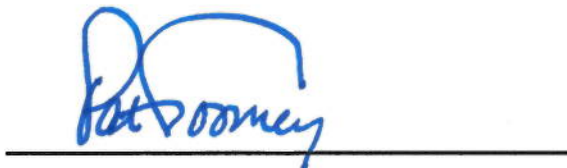
Sincerely,



Mike Crapo
U.S. Senator



Tom A. Coburn
U.S. Senator



Pat Toomey
U.S. Senator



Mike Johanns
U.S. Senator