Investors Disagree with Recent Conflict Mineral Ruling by U.S. Court of Appeals

SEPTEMBER 18, 2015: We strongly disagree with the recent decision by the US Court of Appeals for the District of Columbia Circuit on the conflict minerals provision, Section 1502 of the 2010 Dodd-Frank Act.[1] In granting companies the constitutional right to conceal important information about whether or not the minerals in their products originating from the Democratic Republic of Congo (DRC) or neighboring countries are conflict-free, the Court disregards investors' interest in this information and opens the door to legal challenges to other types of corporate disclosures that are important to investors.

This misguided ruling rests on a misinterpretation of the First Amendment's right to free speech that was not advanced by any of the parties, and, in our opinion, lacks a legal basis. Two of the three judges unreasonably and unnecessarily limited government's ability to compel or regulate commercial speech, based on whether or not such speech is advertising, in the narrow sense of using physical labels on product at the point of sale. This misinterpretation undermines the current U.S. securities disclosure regime, which is premised on the importance of disclosures to investors.

In this ruling, the Court ignored the interests of investors in conflict minerals disclosures that were at issue in this case. The disclosures about companies' supply chain risk and mitigation efforts are of significant material value to investors. This value is demonstrated by increasing mandatory disclosure at the state, national, and international level through the California Transparency in Supply Chain Act (2010), the UK Modern Slavery Act (2015) and the EU Conflict Minerals Directive (2015). These disclosures are a valuable tool to assess companies' social and reputational risks which are intrinsically linked to investors' valuation analysis. For these reasons, we strongly urge the Securities and Exchange Commission (SEC) to petition the Court to reconsider the decision and to defend the rights of investors.

We are pleased that the Court left intact much of the law, limiting its decision to the phrase "not found to be DRC conflict-free." Although companies that are under scope of the law are not required to use this specific wording, they should take into consideration that they are still required to undertake and report on their due diligence efforts. This part of the law has not been challenged and remains in force.

We expect that companies will continue to file their annual reports and continue to responsibly source all minerals from high risk and conflict affected areas. Sourcing minerals responsibly is a critical means of ensuring that the DRC's minerals benefit the Congolese people and do not sustain conflict. Assessing these necessary supply chain checks also gives assurance and confidence to a growing number of investors determined to identify and address human rights-related risks in company supply chains.

Signatories as of September 18, 2015:
Bennett Freeman, Advisory Board, Responsible Sourcing Network
Boston Common Asset Management
Calvert Investments
Responsible Sourcing Network
Trillium Asset Management
US SIF: The Forum for Sustainable and Responsible Investment
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[1] See U.S. Court of Appeals for District of Columbia Circuit, No. 13-5252