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NEWSLETTER
KPMG LLP (U.S.)

Dodd-Frank Quick Hits – Conflict Minerals Newsletter

March 2012

This newsletter, published by Americas' FS Regulatory Center of Excellence (CoE), is intended to provide an overview of key aspects concerning the Conflict Minerals provision (Section 1502) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act or Dodd-Frank).

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Dodd-Frank is having a positive impact in DRC

While operational rules have yet to be adopted by the SEC, it seems that Section 1502 of the Dodd-Frank Act, the Conflict Minerals Provision, is having a positive impact in the Democratic Republic of Congo (DRC) and surrounding countries. The final report of the United Nations (UN) Group of Experts on the DRC issued on December 2, 2011 states that the conflict minerals provision is having an international, positive impact: "The Act has had a huge impact on awareness and implementation of the Group's due diligence guidelines both in the United States and globally." On February 7, the UN Group of Experts being interviewed on its report issued in December stated that the Dodd-Frank Act has "overall been quite positive and a critical catalyst for reform." Notably, the impact has included positive developments in mining sector governance and increased awareness among affected industries of the importance of ensuring that their supply chains are not linked to the financing of armed groups. The UN report mentioned increased production and improved governance in nonconflict areas as well as decreases in financial revenue for many

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Public Policy Alerts

Subscribe to conflict minerals updates from the Americas' Regulatory Co armed groups.[1,2,3,4]

Since the UN's report was issued at the end of last year, conflict-free progress in the DRC region has continued. Last month, two large mines in Eastern Congo that were being run by rebel groups were reclaimed by the Congolese Army. The demilitarization of mines is part of a part of a multistep reform program aimed at cleaning up the minerals trade. Further evidence of progress is that the DRC government said that “it will block exports of tin ore, gold, coltan, and wolframite unless traders can prove the minerals come from mines that are certified by the state as conflict free.”[5] The UN Group of Experts was careful to note in the interview that there is still “significant market uncertainty resulting from the lengthy delay in the publication of the SEC rules coupled with the fear of potential 100 percent ‘conflict free’ demands in their reporting obligations has led most industry actors to pull out of the market rather than conduct due diligence on their supply chains.” [1,2]

Sources:

1 http://www.sec.gov/comments/s7-40-10/s74010-492.pdf

2 http://www.raisehopeforcongo.org/blog/post/congo-army-takes-over-key-mines-now-must-hand-over-police

3 Christian Science Monitor, “Congo army reclaims two mines from rebel groups,” February 15

4 http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/738

5 Reuters, “New Congo scheme targets conflict mineral exports,” February 28

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Furnish vs. file

On February 16, 2011, Congress drafted a letter to the SEC stating that the Commission may violate the intent of Congress if it permits companies to “furnish” rather than “file” disclosures on their use of conflict minerals. *Furnishing* rather than *filing* information about use of the gold, tin, tantalum, or tungsten tied to warfare in Central Africa could diminish companies’ liability under securities law in a way that is inconsistent with the intent of the Dodd-Frank Act provision requiring disclosures, Senator Patrick Leahy of Vermont and six other lawmakers wrote.

The lawmakers who wrote the letter argued that the conflict minerals reports should be “filed” rather than “furnished” to protect investors. “It seems abundantly clear that when a publicly traded company relies on an unstable black market for inputs essential to manufacturing its products it is of deep material interest to investors.” [1] The SEC refers to optional secondary documents as "furnished" documents. Only official documents are considered "filed". A filing requirement would add liability to the company's conflict minerals statement and report.

The letter further argues against allowing a company to use the term “indeterminate” to categorize the source of its minerals.[1]

Sources:

1 Congress’s letter to the SEC, February 16, 2012

2 Bloomberg Businessweek, “U.S. Lawmakers Challenge SEC on Wording in Conflict-Mineral Rule,” February 22

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What is in a conflict minerals policy

The last issue of our Conflict Minerals Newsletter covered corporate policies; KPMG research identified 77 publicly available statements concerning conflict minerals online. Taking a step further, this month we will share some insight into the contents of over 60 of those conflict minerals statements.

KPMG reviewed 62 policies that were clearly labeled as “Conflict Minerals” specific statements. It was found that while a diverse range of sectors were represented, including aerospace, consumer products, automotive, industrial products, and extractives, it is the electronics industry that has the highest number of companies listing a conflict minerals policy online, comprising approximately 75 percent of the sample population.

There has been a great deal of concern that the Dodd-Frank Act has or will cause an embargo on the DRC and surrounding countries, driving companies to refuse to source from the area in order to be compliant with the law. However, in our reading of the policies, only one company specifically cites a policy of not purchasing minerals from DRC as a whole, while six companies mention outright that their intent is *not* to ban sourcing from DRC; another eight companies state that it is their policy to source from conflict-free regions.

There are a number of key themes represented in the policies:

- Fourty-four companies (71 percent) mention being members of the Electronics Industry Citizenship Coalition; this is not surprising given that 75 percent of the reviewed policies are from the electronics industry.
- Thirty-five companies (56 percent) include specific supplier requirements/expectations in their policy.
- Twenty-six companies (42 percent) provided some background

context in relation to the conflict minerals issue.

- Fourteen companies (23 percent) reference the complexity involved in mapping out the supply chain.
- Twenty-two companies (35 percent) specifically make reference to the Dodd-Frank legislation.
- Eleven companies (18 percent) have a policy that encompasses more than just conflict minerals (for example, labor, health and safety, environmental and ethical aspects).

To see KPMG's template for a Conflict Minerals Policy Framework, please reach out to our Conflict Minerals team. Please also feel free to contact us if you have any questions concerning conflict minerals or would like to be invited to our upcoming Webcast once the SEC issues the final rules. (If you have already requested to be invited, we've already logged your contact information.)

Other relevant reading that may be of interest:

- For an overview of other legislation impacting supply chains, click here.
- The latest issue of KPMG's "Moving Parts – Maximizing Supply Chain Performance," an automotive industry-specific publication, includes conflict minerals

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