

Dodd-Frank Quick Hits – Conflict Minerals Newsletter | Volume 5

July 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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SEC announces Sunshine meeting to include vote on conflict minerals and Section 1504

The Securities and Exchange Commission (SEC) announced a [Sunshine Act meeting for August 22, 2012](#). The Sunshine Act is a federal law requiring regulatory authorities' meetings, decisions, and records to be made available to the public. It was passed to increase public disclosure of governmental agencies. The law does not allow citizens to attend all meetings, but does ensure that media and representatives of the public can attend.

Topics for discussion during the Sunshine Act meeting on August 22 include "whether to adopt rules regarding disclosure and reporting obligations" related to sections 1502 and 1504 of the Dodd-Frank Act. There have been a few questions on the use of the term "whether" in this announcement; however, it is our understanding that this is common language to discuss a vote allowing that the final rules could be sent back to the SEC for further revision, but this is not likely.

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the United States and approved with the advice and consent of the Senate. Their terms last five years and are staggered so that one commissioner's term ends on June 5 of each year. No more than three commissioners may belong to the same political party. The president designates one of the commissioners as chairman, the SEC's top executive. The current chairman is Mary Schapiro. See list of Commissioners [here](#).

KPMG will host a Webcast as soon as the SEC announces the final rules on conflict minerals. Please [click here](#) if you'd like to be invited to the Webcast.

Visit KPMG's Conflict Minerals [Webpage](#).

[Click here](#) to view KPMG's latest publication, *"Financial transparency in the extractive industries: Dodd-Frank Section 1504."*

Sources: (1) SEC.gov; (2) Bloomberg, "U.S. SEC To Meet On Conflict Mineral And Advertising Rules," July 3, 2012; 3) Reuters, "SEC sets date to vote on conflict minerals rule," July 3, 2012.

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Conflict minerals audit requirements

With the SEC's vote on the final rules now scheduled, questions around the audit requirements may soon be resolved. Whatever the form of the external audit becomes, companies will want to avoid "qualified opinions." A qualified external audit opinion indicates the external auditor could not confirm what management has performed. This could have an impact on a company's share price to the extent the market and investors react negatively. The point of these provisions is to provide investors more information so they can determine who they want to invest in. The SEC is the ultimate regulator of publicly traded companies which now includes the conflict minerals and mining provisions as part of their reporting. Nongovernmental organizations (NGOs) and other interested parties also have vested stakes; however, the end result will be determined by reporting to the SEC. It is imperative when companies are creating their due diligence they ensure what they are building will withstand an audit under both U.S. Generally Accepted Auditing Principles (GAAP) and Generally Accepted Auditing Standards (GAAS) until more clarity is provided around the audit objective and standards. This will at least allow for a company to be more prepared once the final implementation time line has been announced.

Conflict minerals is but one compliance matter in a growing landscape of increased supply chain transparency. Other subjects include human trafficking, environmental protection, local laws and regulation, and Foreign Corrupt Practices Act (FCPA). Companies are well advised to build a holistic process around supply chain transparency, one that seeks to leverage resources and improve business operations beyond mere compliance. There's increasing interest in social responsibility initiatives, for example.

[transparency in the extractive industries: Dodd-Frank Section 1504](#)

[Conflict Minerals Provision of Dodd-Frank](#)

[Conflict minerals – Does compliance really matter?](#)

[Conflict Minerals Overview \(April 2012\)](#)

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European Union furthers transparency legislation

On June 19, KPMG attended a roundtable discussion in Brussels, hosted by Mazungumzo, the African Forum in Brussels, in collaboration with member of the European Parliament, Judith Sargentini. The discussion was centered around the newly proposed EU transparency requirements for the extractive and forestry sectors and whether the future European legislation will oblige companies from the extractive and forestry industries operating in Africa to comply with specific transparency and reporting requirements, going beyond the provisions of the Dodd-Frank Act.

Proposed on October 25, 2012, the EU legislation is based on the guidelines of [Publish What You Pay](#), a global network of civil society organizations for disclosure of information on extractive industry revenues and contracts. The law is similar to the three key areas of the Miscellaneous provisions of Dodd-Frank: Conflict Minerals, Mine Safety Disclosures, and Payments to Governments by Resource Extraction Issuers. The European Commission's proposed bills would require European Union-listed or large unlisted oil, gas mining, and logging companies to disclose their payments to all governments on a country-by-country and project-by-project basis. See [Original Proposal Document](#).

At present the EU has no "conflict minerals" specific legislation being proposed, but there were clear sentiments at the roundtable discussion that the EU should have its own conflict minerals law in order to help European companies comply with Dodd-Frank. Further discussion indicated that a "conflict minerals law" in the EU would not be limited to a region or set of minerals (e.g., Democratic Republic of the Congo (DRC) or surrounding countries, or tin, tantalum, tungsten, and gold).

In light of this discussion and the EU's proposed legislation, it seems clear that we have entered an "age of regulation," where companies will be required to prove the transparency of their supply chains and good governance.

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Early adopters – KPMG hosts a forum discussion with conflict minerals implementers

It has been one year since the U.S. State Department issued its statement that companies begin to implement a conflict minerals program for due diligence.¹ Since then, a handful of companies have begun to study their supply chains for the source of 3TG. With final rules imminent, KPMG is hosting a series of forum-style events titled "Conflict Minerals – A Discussion with Market Leading Implementers." The first forum was held at The Townsend Hotel in Detroit on June 14; panelists offered a range of experience including supply chain, public policy, legal, and audit and shared their firsthand

The panel discussion was moderated by Sam Fogleman, KPMG partner, who directed the conversation and fielded questions from the audience of over 60 people. Feedback from the audience indicated that 62 percent of the participants believe that conflict minerals will have direct impact on their job; 82 percent of participants found the discussion meaningful and helpful.

KPMG will be hosting these forums in local markets. To find out about a forum near you, please [click here](#).

Source: (1) Metal Miner, "US Department of State Urges Businesses to Begin Addressing Conflict Minerals Traceability Requirements," July 27, 2011.

Conflict Minerals Detroit panelists

- Peter Gudritz – Public Policy Manager, The Dow Chemical Company
- John Ruebush – Category Leader, Technical Materials, Medical Devices & Diagnostics Supply Chain, Johnson & Johnson
- Brad Arbuckle – Principal, Miller Canfield
- Jim Low – Partner, KPMG

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