

Dodd-Frank Quick Hits – Conflict Minerals Newsletter | Volume 8

February 2013

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 Advisory Committee believes conflict minerals requirements are harmful to small reporting companies

The SEC Advisory Committee on Small and Emerging Companies¹ (The Committee), met on February 1, 2013 to discuss a number of topics related to small businesses, including conflict minerals. In a discussion document², the Committee expressed the view that small reporting companies (SRCs) should be exempt from conflict minerals disclosures for reasons including: requirements that result in significant costs for SRCs without generating information necessary to making an informed investment decision and have a negative effect on capital formation. The Committee stated that it is its belief that Congress should take action to exempt small businesses from conflict minerals disclosure obligations and payments by resource extraction issuers.

The Advisory Committee on Small and Emerging Companies was formed by the SEC in 2011 to seek advice on its rules, regulations, and policies, as they relate to emerging companies or privately held small businesses and publicly traded companies with less than \$250 million in public market capitalization.

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Links

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

[Conflict Minerals and Beyond Part Two: A More Transparent Supply Chain](#)

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[Public Policy Alert - Implications of the Conflict Minerals Rule - Lessons Learned](#)

Sources: 1) <http://www.sec.gov/info/smallbus/acsec.shtml>; 2) SEC Advisory Committee on Small and Emerging Companies – February Meeting (<http://www.sec.gov/info/smallbus/acsec/draft-committee-recommendations-statement-020113.pdf>)

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OECD releases its final downstream report for 3T pilot

The SEC final rule for conflict minerals states that due diligence should be based on an internationally recognized framework; currently, the only framework available is the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas¹. In 2011, the Organisation for Economic Cooperation and Development (OECD) launched a pilot program for implementing its due diligence guidance for tin, tantalum, and tungsten (3T). Thirty companies participated in the pilot and aimed to demonstrate common and practical approaches to carry out due diligence in accordance with the OECD Guidance and to minimize the burden to the extent practical and encourage companies to continue sourcing from the Democratic Republic of the Congo (DRC).

The third and final report² on the pilot highlights progress across a number of areas of the Guidance. More companies have implemented corporate conflict minerals policies and have undertaken efforts to gain a better understanding of their supply chain and have engaged with their suppliers. The report identifies a number of key trends citing that companies have agreed to source responsibly from DRC, progress made in identifying company smelters, and increased cross-sector collaboration including industry associations supporting members through standard tools and education.

The report also includes helpful materials for communicating to suppliers on conflict minerals; this includes sample supplier letters and sample contract clauses. The report includes a global smelter list.

Sources: 1) *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, December 2010; 2) *Downstream Implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas – Final Report on one-year pilot implementation of the Supplement on Tin, Tantalum, and Tungsten*, January 2013.

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Responsible Sourcing Network report: multi-stakeholder approach is critical for supply chain transparency

A recent report from Responsible Sourcing Network summarizes the activities taking place across a broad group of industries, including

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

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companies, industry groups, NGOs, and others, working toward a DRC conflict-free supply chain. The report recommends that companies go beyond SEC compliance with Section 1502 and encourages organizations to implement supply chain traceability as well as engage with key stakeholders; arguing that this “is a critical component towards implementing industry-wide standards for conflict-free mineral sourcing and achieving a peaceful, stable, and prosperous Congo.” The only way to ensure that supply chains are 100% free of conflict minerals is by ending the conflict in the DRC.^{1, 2}

One of the many issues being argued about those who oppose Section 1502 is that it does not increase shareholder value. The report argues that “Investors are looking for companies to take actions that will minimize their material and reputational risks as well as be fiscally responsible... [and] Sustainable and responsible investors want companies to source their minerals from the DRC and neighboring countries in a certified ethical and sustainable way so they contribute towards building a conflict-free environment.”^{1, 2}

Sources: 1) *Social Funds*, “Many Industry Sectors Unprepared for Conflict Minerals Rule,” February 1, 2013 (<http://www.socialfunds.com/news/article.cgi?sfArticleId=3738>); 2) *Responsible Sourcing Network*: “What’s Needed: An Overview of Multi-Stakeholder and Industry Activities to Achieve Conflict-Free Minerals.” January 2013. http://www.sourcingnetwork.org/storage/Minerals_WP.F_online-print.pdf

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Business groups file explanation for conflict minerals lawsuit

The National Association of Manufacturers, the U.S. Chamber of Commerce, and Business Roundtable explained their case for why the SEC final rule on conflict minerals should be annulled on January 16. On January 23, the American Coatings Association (ACA) filed an amicus brief lending it support to the business group’s suit. The SEC has until March 1 to file a response. The business group’s lawsuit was filed last November.^{1, 2}

Summary of the argument: The group stated that “This rule is one of the costliest in the SEC’s history,” and that the SEC figures of costing \$3 billion to \$4 billion, and ongoing compliance an additional \$200 to \$600 per year underestimates the expense. In the brief, the group argues that the SEC imposed these costs without determining if the rule would benefit the Congolese people. And that the Commission violated the First Amendment rights by requiring companies to publicly state their products are “not DRC conflict free,” that is, they contain conflict minerals.^{1, 3, 4}

So what could happen? Scheduling actual trial proceedings could happen within 12–18 months. These proceedings may continue for several reporting cycles for the SEC filing dates for affected companies. Thus, if the provision is modified or annulled based on judicial interpretation, companies still need to plan on filing the required SEC form SD beginning with quarterly cycles this calendar year.⁵

Sources: 1) Reuters, "U.S. Business Groups Challenge SEC Rule on Congo Minerals," January 16, 2013; 2) Paint Square, "ACA Fights Rule on Conflict Minerals," January 28, 2013 (<http://www.paintsquare.com/news/?fuseaction=view&id=9062>); 3) http://www.nam.org/~media/B5825277D7C144A48C2C4442054900D4/NAM_v_SEC_brief_only_01162013.pdf; 4) Wall Street Journal Blog - Corruption Currents, "Business Groups Fully Brief 'Conflict Minerals' Legal Challenge," January 17, 2013; 5) Sustainable Business Forum, "Dodd Frank Act - First Legal Test on Conflict Minerals Provision," January 27, 2013

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