

# Dodd-Frank Quick Hits – Conflict Minerals newsletter | Volume 10

June 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 issues long-awaited guidance

On May 30 the SEC released guidance in the form of FAQs to provide clarity on the Conflict Minerals Rules issued on August 22, 2012. The guidance included clarity around what products and services may be considered out of scope.

**Packaging** – The packaging or container sold with a product is not considered to be part of the product and is not subject to the rule; however, if the manufacturer sells the package or container as its product, it is subject to the rule.

**Branding or labeling generic products** – An issuer that specifies that a generic product manufactured by a third party be etched or marked with a logo, serial number, or other identifier is not considered to be "contracting to manufacture" the product.

**Generic components of manufactured products** – An issuer that directly manufactures or contracts to manufacture a product that contains a generic component it purchased to include in its product must conduct a reasonable country of origin inquiry with

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## Links

[Visit KPMG's Conflict Minerals Web page](#)

[Defining Issues – SEC Issues Guidance for Conflict Minerals and Disclosure of Payments by Resource Extraction Issuers](#)

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respect to conflict minerals included even in such generic components.

Tools and production equipment – Tools, machines, or other equipment used to manufacture an issuer's products are not products themselves. Even if the issuer subsequently sells such equipment, it is not required to file reports relating to such equipment under the Conflict Minerals Rules.

Equipment used to provide a service – Issuers using equipment they manufacture or contract to manufacture do not need to file a report if the equipment is used for a service the issuer provides and the equipment is retained by the service provider, and is required to be returned to the service provider or intended to be abandoned by the customer following the terms of service.

Activities associated with mining – An issuer that only engages in activities customarily associated with mining, such as transporting, crushing, milling, leaching, and smelting prior to transportation to a refinery, is not considered to be manufacturing those minerals.

Note: (a) As stated by the SEC in its release on May 30, "These FAQs are not rules, regulations, or statements of the Commission. Further, the Commission has neither approved nor disapproved these FAQs."

For further information please see [KPMG's Defining Issues – SEC Issues Guidance for Conflict Minerals and Disclosure of Payments by Resource Extraction Issuers](#). [Click here](#).

**Sources:**

- 1) <http://www.sec.gov/divisions/corpfin/guidance/conflictminerals-faq.htm>
- 2) Shearman and Sterling, "SEC Staff Issues Guidance on Conflict Minerals," May 31, 2013.

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## New thought leadership: ***Conflict minerals and beyond – Part three: Optimizing the supply chain***

The Americas' Regulatory Center of Excellence announces "*Conflict minerals and beyond – Part three: Optimizing the supply chain*," which is the third report in a four-part series that covers Section 1502 of the Dodd-Frank Act.

This report asserts that companies should go beyond compliance and integrate supply chain management into their strategy by measuring performance based on the yardsticks of sustainability as well as financial goals. Given the trends, the smart approach is to keep ahead of competitors and proactively optimize the supply chain.

As companies extend their supply chains to every corner of the globe, they become vulnerable to risks that are difficult to manage. By optimizing the supply chain, companies can achieve their long-term strategic goals of reducing costs, enhancing effectiveness,

[Beyond Part One: Developing a Global Compliance Strategy](#)

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

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

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and strengthening sustainability. KPMG member firms believe that compliance with these regulations is not just a box-ticking exercise, but a matter of developing and adhering to a strategy.

For an advanced copy of the report [click here](#).

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## Whistleblowers and conflict minerals

The SEC adopted rules for the Whistleblower provision of Dodd-Frank (section 922) on May 25, 2011, which authorizes the SEC to pay rewards to a whistleblower, a person who provides information to the SEC relating to a possible violation of the securities laws that has occurred, is ongoing, or is about to occur that leads to successful SEC enforcement actions and certain related actions.<sup>1</sup>

A recent article indicated that the SEC Whistleblower Program will "turbocharge the SEC's enforcement program." <sup>2</sup> In the case of conflict minerals, if a whistleblower brings the SEC a good tip of substantial violation of the conflict minerals rule, the SEC may have incentive and reason to bring a case against a company.

It remains to be seen how the SEC's Whistleblower Program will intersect with the Conflict Minerals rule, but companies hoping to use the "undeterminable" category while not taking the steps to comply with Section 1502 may risk exposure and SEC enforcement if a whistleblower's complaint makes it to the SEC. According to the *Corporate Crime Reporter*, "The culture at the SEC has become increasingly welcoming of whistleblowers..." The SEC is currently working with whistleblowers in a number of cases, and the trend is expected to continue.<sup>2</sup>

For further reading [click here](#).

### Sources:

- 1) <http://www.sec.gov/news/press/2011/2011-116.htm>
- 2) *Corporate Crime Reporter*, "SEC's Cohen Predicts Major Whistleblower Awards Soon," June 12, 2013.

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## EU Conference on an initiative for conflict minerals

On June 3, MEP Judith Sargentini (Greens/EFA) hosted the European Parliament Conference on the future EU Initiative on Conflict Minerals. The event was organized by the European Network for Central Africa and the Belgian Network for Natural Resources.

The conference centered on how the EU's imminent conflict minerals proposal can have a positive impact on the ground for long-term stability and development. The conference was broken into two panel discussions; the first discussed the possible scope and content of a European proposal, which included discussions of experience implementing existing initiatives (i.e., Dodd-Frank). The second panel discussed how to realize positive effects and sustainable development for the mining sectors, local economies, and people in the conflict-affected regions.

According to the European Commission, the proposed legislation would not be limited to a region, and should include commodities beyond tin, tantalum, tungsten, and gold. Panelists were largely in favor of an EU Initiative to support certification schemes and require due diligence that would create and promote growth and prosperity for those living in the resource-rich countries. Panelists further urged the EU to consider an initiative that is based on existing programs and is modeled after the UN Guiding Principles and OECD Due Diligence Guidance.

Timing: the EU open consultation closed on June 26. A report summarizing the information from the consultation will be available during the late fall; the European commission is scheduled to issue its proposal by the end of 2013.

Members of KPMG attended the session and noted that the panelists did not include a member of the corporate sector. For more information on the session, [click here](#).

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## Apparel industry issues conflict minerals guidance

The American Apparel and Footwear Association (AAFA) has developed guidance to help AAFA members comply with Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The association offered the guidance as a "living" document that will be updated as new information is learned; new systems are developed; and as the SEC promulgates enforcement guidance.

The guidance is not intended to offer "legal advice" and offers its "industry interpretation" for key provisions and terms in the SEC final rule that includes guidance for defining terms that were left undefined by the SEC. The AAFA offered industry definitions for the following terms: product; contract to manufacture; necessary to the functionality; necessary to the production; component; and derivatives.

**Source:**

*American Apparel and Footwear Association, "Conflict minerals guidance 2.0," May 28, 2013.*

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# KPMG conflict minerals share forums go global

During May and June, KPMG hosted five share forums to discuss conflict minerals. Across the Northeastern United States and in London, companies gathered with subject matter professionals from KPMG, law firms, representatives from the Enough Project, and government representatives including MEP Judith Sargentini in London, to discuss the broad impact Dodd-Frank is having across the supply chain, and the potential for new legislation in the EU and other regions.

These forums go beyond Web-based presentations to allow companies an opportunity to interact with one another and to learn about methods for managing complexity associated with meeting SEC requirements. For more information on how to attend a forum [click here](#).

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