

Dodd-Frank Quick Hits – Conflict Minerals newsletter | Volume 9

May 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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Court cancels oral arguments in the NAM vs. SEC lawsuit

On April 29, the Washington, DC Circuit canceled oral arguments scheduled in the National Association of Manufacturer's (NAM) challenge to the Securities & Exchange Commission (SEC) rule on Conflict Minerals. The case is being transferred to district court where the case will be heard by a trial judge and could then be appealed back to the Washington, DC Circuit after a decision is reached. The current time line for the trial is unknown, but a decision is not expected in the immediate future. Companies that were waiting on the outcome of the trial before beginning to comply will need to act now in order to prepare for the May 2014 Conflict Minerals disclosure.

In a similar case, the *American Petroleum Institute v. SEC*, the Court of Appeals for the Washington, DC Circuit argued that it did not have jurisdiction to consider the challenge of the [SEC resource extraction rule](#) that was issued pursuant to the Dodd-Frank Act. The decision from the *American Petroleum Institute v. SEC* was

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important because of the similarities between the Conflict Minerals rule and the resource extraction rule: “Both were required by the Dodd-Frank Act, enacted by the Commission on the same day, tackle social ills (the funding of violent warlords for the former, bribery for the latter), and require filings that use the new Form SD. Both are also being challenged with lawsuits filed by industry groups.”²

Sources:

- 1) Squire Sanders Conflict Minerals Law;
- 2) Compliance Week, “Appeals Court Ruling Could Drag Out Conflict Minerals Lawsuit,”
(<http://www.complianceweek.com/appeals-court-ruling-could-drag-out-conflict-minerals-lawsuit/article/291739/>)

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Canada and EU consider Conflict Minerals legislation

The trend of social issues being regulated continues to progress as Canada and the EU have announced initiatives for Conflict Minerals legislation.

Canada – On March 26, a bill was introduced in the House of Commons proposing a Canadian Conflict Minerals Act that would require Canadian companies to exercise due diligence with respect to conflict minerals sourced from the Great Lakes Region of Africa. This is the second time a Conflict Minerals proposal has been proposed in the country and the timeline for adoption is uncertain. The bill is being touted as “Canadian Conflict Minerals Law,” but there are some distinct differences between the U.S. rule and Canada’s proposed bill, including impacted companies, definition of minerals is broader in the Canada bill, and variance of covered countries. ^{1, 2}

The EU – On March 27, the European Commission launched a public consultation regarding a potential EU initiative for responsible sourcing of minerals from conflict-affected and high-risk areas. The commission wants to deepen its understanding of issues such as the sourcing and security of supply of minerals, supply chain transparency, and good governance. The consultation is open until June 26, 2013 and the information will use the results to help it decide whether and how to complement and/or continue ongoing initiatives to support good governance in mineral mining in developing countries. ^{1, 2}

Sources:

- 1) <http://www.kslaw.com/library/newsletters/EnergyNewsletter/2013/April/article11.html>;
- 2) http://www.srz.com/Is_Conflict_Minerals_Regulation_Going_International-New_Developments_in_Canada_and_the_EU/

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AICPA issued new information for Conflict Minerals

[Horizon](#)

[Conflict Minerals: Time to Develop a Compliance Strategy](#)

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

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The American Institute of Certified Public Accountants (AICPA) has formed a working group to develop guidance for the performance audit of the conflict minerals report. Recently, the AICPA published a [questions and answers](#) document that describes the key similarities and differences between attestation and performance audit services. Visit the "[AICPA Conflict Minerals Resources](#)" Web page for background and other useful information about the use of conflict minerals.

Sources:

<http://www.aicpa.org/interestareas/frc/pages/aicpaconflictmineralsresources>

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Midyear SEC reporting and FASB forum

Jim Low, KPMG's partner and head of the Americas' Regulatory Center of Excellence will be presenting on Conflict Minerals during the Midyear SEC reporting and FASB forum. Low will present an overview of the rule, what companies are required to do, and some leading practices for compliance based on what companies are doing to prepare for next year's deadline.

The forum will take place in four locations:

- May 16 – Ritz Carlton – Pentagon City – 3:15 p.m.–4:15 p.m.
- May 21 – Four Seasons Resort & Club – Dallas, TX – 3:00 p.m.–4:00 p.m.
- June 17 – Hilton, New York – 3:15 p.m.–4:15 p.m.
- June 24 – Ritz-Carlton, San Francisco – 3:15 p.m.–4:15 p.m.

[Click here](#) for more information.

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EICC-GeSI meeting in Hong Kong

KPMG cosponsored the eleventh conflict minerals workshop that was held on May 8–9 in Hong Kong. It was the first conflict minerals workshop to take place in Asia, with hopes that companies headquartered there, and multinationals with locations in China, Japan, and Taiwan, among others, would join. Nearly 150 people gathered for the two day event; many participants learning for the first time about initiatives that are taking place in effort to create a conflict-free supply chain. Those who have attended the workshops, which have been going on since 2007, were encouraged by the number of new faces and organizations, as well as the progress taking place.

KPMG participated as a facilitator in the Downstream breakout session on the second day, lead by **Jay Celorie** from HP and **Bryan Friereck** from Intel. The discussion centered around the EICC template, due diligence and compliance, and various tools

available to assist companies with developing their strategy to implement a Conflict Minerals program. It is worth noting the progress since the September meeting in Brussels, following the release of the SEC final rules, where questions centered on uncertain terms within the final rule, this conversation included practical steps for developing a conflict minerals strategy and basic ideas for surveying suppliers.

The EICC announced it will issue a white paper in June that will provide relevant, practical information and lessons learned from those who have completed the survey.

For more information, [click here](#) or contact [KPMG's Conflict Minerals team](#).

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OECD-ICGLR-UN Group of Experts meeting on supply chain due diligence

On May 2, 3 the OECD-ICGLR-UN group of experts meeting on supply chain due diligence for responsible sourcing in the 3T and gold supply chains took place to discuss progress of the pilot programs and the implementation and status of various initiatives.

The meeting included two days of discussion with concurrent sessions for 3Ts and gold. Discussions indicated that the programs in place are moving toward real reform in the Great Lakes Region, and speakers and presenters were careful to note that patience is required as reform takes time and will not be perfected overnight.

The final session of the two-day meeting included a public consultation of the EU initiative on responsible sourcing of minerals from conflict-affected and high-risk areas. Participants urged the EU to consider adoption of harmonized legislation and enforcing the OECD guidance; and encouraged the development of a broad approach where the EU assist to develop and strengthen the governments and governance in the Great Lakes Region, not just call for compliance activities for companies.

For more information contact [KPMG's Conflict Minerals Team](#).

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EICC and GeSI announced its new working group name, "Conflict Free Sourcing Initiative."

On May 1, the Electronic Industry Citizenship Coalition (EICC) and the Global e-Sustainability Initiative (GeSI) announced the launch of the Conflict-Free Sourcing Initiative (CFSI). CFSI replaces the name "EICC-GeSI Extractives Work Group" as the initiative grows and becomes more inclusive of stakeholders and a wide range of industry sectors supporting the sourcing of conflict-free minerals.

Currently, the program includes industry groups like AIAG, JATO, RILA, RJC, and others who have been working with EICC-GeSI over recent years to develop a broad approach to supply chain transparency.

Source:

http://www.csrwire.com/press_releases/35565-EICC-and-GeSI-Launch-Conflict-Free-Sourcing-Initiative?utm_medium=Twitter&utm_campaign=CSR%2Band%2Bsustainability%2Bnews

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UN Global Compact and Global Business Initiative on Human Rights meeting in Beijing

KPMG was selected by the UN Global Compact and Principles for Responsible Investment to assist in the development of a resource package to report on the work companies have done implementing the [Guidance on Responsible Business and Investment in Conflict-Affected and High-Risk Areas](#).

On April 16, The UN Global Compact Network China, Tsinghua University School of Economics and Management, the UN Global Compact, the Principles for Responsible Investment, and the Global Business Initiative on Human Rights held an event in Beijing, China, to promote responsible business and investment practices by engaging companies to explore the challenges and opportunities of respecting and supporting the UN Global Compact principles in all countries where they operate—especially in high-risk areas. KPMG was pleased to attend this event and present the resource package that is being developed and will be launched in September 2013. KPMG is proud to be working on this important project.

For more information [click here](#).

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