

SEC Adopts Final Conflict Minerals Rules

On August 22, 2012, the Securities and Exchange Commission adopted final rules relating to “conflict minerals” originating in the Democratic Republic of the Congo and adjoining countries (currently, Angola, Burundi, Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda and Zambia) (together the “Covered Countries”). Adoption of the rules was required pursuant to section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The minerals regulated under these rules are: cassiterite (tin), columbite-tantalite (tantalum), gold, wolframite (tungsten), any additional minerals as determined by the Secretary of State and their derivatives.

Determination of Applicability of Conflict Minerals Rules

Public companies are subject to the conflict minerals rules if conflict minerals are “necessary to the functionality or production” of a product they manufacture or a product they contract to be manufactured by third parties. Companies subject to the conflict minerals rules are required to determine, following a “reasonable country of origin inquiry,” whether their conflict minerals originated in the Covered Countries or are derived from scrap/recycled materials.¹

If a company determines that it is subject to the conflict minerals rules, it will be required to disclose such determination in a new Form SD.

Reasonable Country of Origin Inquiry

The “reasonable country of origin inquiry” must cover all conflict minerals that are necessary to the functionality or production of the reporting company’s products. The SEC has not defined “reasonable country of origins inquiry” and has instead stated that such determination should be based on an individualized facts and circumstances determination.

If a company determines that its conflict minerals did not originate in a Covered Country or originated in a Covered Country but were derived from scrap/recycled materials,² its products qualify as “DRC conflict free.” The determination must be disclosed in its Form SD and on its website. If a company determines that any of its conflict minerals are not DRC conflict free, it will be required to disclose this determination in its Form SD, prepare a conflict minerals report to be furnished as an exhibit to its Form SD and publicly disclose this information on its website.

Due Diligence and Conflict Minerals Report

If a company determines that any of its conflict minerals are not DRC conflict free, it must conduct due diligence on the source and chain of custody of its conflict minerals and include a description of such diligence procedures in its report. A company’s report must also include a description of the products manufactured or contracted to be manufactured containing the conflict minerals, the facilities used to process those conflict minerals, the country of origin of those conflict minerals and the efforts made to determine the mine or location of origin with the greatest possible specificity. The SEC has not set forth specific due diligence standards, but has indicated that a company’s conduct should conform, where available for the specific conflict mineral, to nationally or internationally recognized standards of, or guidance for, due

¹ The conflict minerals rules do not apply to any conflict minerals that are outside of the supply chain prior to January 31, 2013.

² A company must exercise due diligence regarding whether their conflict minerals are from scrap/recycled materials. Such due diligence must conform to a recognized national or international due diligence framework, if available, for the particular scrap/recycled conflict mineral.

diligence regarding conflict mineral supply chains. A company must also obtain, and certify to, an independent audit validating its findings.

If a company, after conducting its due diligence, is unable to determine the source of its conflict minerals it can designate its products as “conflict undeterminable” and defer the audit of its report for up to two years. Smaller reporting companies are permitted to use this designation for up to four years. Such companies, however, must still file a report, and must describe the steps they have taken or will take to mitigate the risk that their conflict minerals benefit armed groups, including steps to improve their due diligence.

Initial Form SD Filings

All companies subject to the conflict minerals rules will be required to file their initial Form SD by May 31, 2014, for the calendar year ending December 31, 2013.