

Implementing the SEC's Final Conflict Mineral Rules: Guidelines and Commonly Asked Questions

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On August 22, 2012, the SEC issued [final rules](#) to implement Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which requires companies that file Exchange Act reports, including foreign private issuers, to provide disclosures about conflict minerals that are “necessary to the functionality or production of a product manufactured by the company.” Conflict minerals are defined as cassiterite, columbite-tantalite, gold, wolframite and other minerals determined by the U.S. government to be financing conflict in the Democratic Republic of Congo or adjoining countries, called the “Covered Countries.” The conflict minerals disclosures are required to be contained in a new form, Form SD, to be filed by May 31 for the prior calendar year, beginning May 31, 2014.

Prior to January 1, 2013, the implementation date for the conflict mineral rules, companies must make a significant threshold determination—does the company manufacture or contract to manufacture products for which conflict minerals are necessary to the functionality or production? Companies that answer yes to this question will be subject to the conflict mineral disclosure requirements and must begin scrutinizing the origin of conflict minerals in their products on January 1, 2013. Part I of this memorandum provides some general guidelines for making this baseline determination, which is by its nature highly fact-specific. We believe these guidelines are reasonable, but it is important to note that there has only been limited guidance to date in the adopting release for the final rules and the SEC staff may interpret the rules differently in some regards in the future. We encourage you to contact us to discuss the application of the rules under your specific facts and circumstances. In addition, it will be important to monitor how similarly situated companies respond to the rules as companies who take paths at odds with other similarly situated companies may find themselves in a spotlight.

Once a company determines that it does manufacture or contract to manufacture products for which conflict minerals are necessary to the functionality or production, the company must undertake a reasonable country of origin inquiry. If, as a result of that inquiry, the company has reason to believe that its conflict minerals may have originated in the Covered Countries and may not have come from scrap or recycled sources, the company must conduct due diligence to determine whether the conflict minerals in these products originated in the Covered Countries. These inquiries and the related disclosures invoke additional interpretative questions. Part II of this memorandum contains commonly asked questions related to the reasonable country of origin inquiry and the due diligence that may follow. Part III addresses commonly asked questions concerning the mandatory disclosure and reporting on Form SD.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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