



California Corporate & Securities Law

Bill Aims To Add Bite To Federal Conflict Minerals Disclosure Requirement

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Section 1502 of the Dodd–Frank Act added a new Section 13(p) to the Securities Exchange Act of 1934. Section 13(p) requires the SEC to promulgate disclosure and reporting regulations regarding the use of conflict minerals from the Democratic Republic of the Congo and adjoining countries.

In compliance with this Congressional mandate, the SEC issued these [proposed regulations](#) last December. In this February [posting](#), Broc Romanek declared Section 1502 to be “the Dodd–Frank sleeper for disclosure lawyers”. The SEC’s extended comment period on its proposed regulations ended on March 2. Now, one California legislator is proposing to penalize companies who make (or fail to make) specified conflict mineral disclosures.

State Senator [Ellen Corbett](#) has introduced a bill to disqualify “scrutinized companies” from bidding on or submitting proposals for a contract with a state agency for goods or services. As introduced, [SB 861](#) the definition of “scrutinized company” is a chaotic confusion of conjunctions. The author combines so many “ands” and “ors” that it is difficult to discern who will be covered. The bill also incorrectly refers to the “Securities *and* Exchange Act of 1934” and the “Securities Exchange Commission”. The bill also fails to distinguish between information that is “filed” with and information that is “furnished” to the SEC. I’ve submitted this comment [letter](#).

Conflict minerals are cassiterite (SnO₂, the primary ore of tin), columbite–tantalite (the metal ore from which tantalum (Ta) is extracted), gold (Au), wolframite (the metal ore used to produce tungsten), or their derivatives (the U.S. Secretary of State can add to this list). According to the SEC, these minerals are used in everything from jewelery to mobile phones.

If this bill becomes law, only those companies that are required to submit reports under the Exchange Act will be at risk – thereby giving an advantage to privately held companies.

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