



Please contact any of the attorneys below if you have any questions regarding this alert.

Nancy Grunberg
nrgrunberg@Venable.com
202.344.4730

George Kostolampros
gkostolampros@Venable.com
202.344.8071

Gregory M. Gill
gmgill@Venable.com
202.344.4615

Thomas D. Washburne, Jr.
twashburne@Venable.com
202.344.4068

D. E. Wilson, Jr.
dewilson@Venable.com
202.344.4819

Eric R. Smith
ersmith@Venable.com
410.528.2355

Sigmund G. Libowitz
sglibowitz@Venable.com
202.344.4327

Section 1502 of the Dodd-Frank Act: New SEC Reporting Requirements for Issuers Using Conflict Minerals

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). Among the highly-publicized financial regulatory reforms, Section 1502 of the Dodd-Frank Act amends Section 13 of the Securities Exchange Act of 1934 and requires the Securities and Exchange Commission (SEC) to enact rules and regulations that impose disclosure and, in some instances, auditing requirements on publicly traded companies who use "conflict minerals" in manufacturing their products.

Section 1502 and the bloody conflict in the Democratic Republic of Congo

Congress enacted Section 1502 to address the ongoing bloody conflict in the Democratic Republic of Congo (also known as the "DRC") where warring factions have been involved in extreme levels of brutality, including sexual and gender-based violence. These armed groups finance their operations through the exploitation and trade of various "conflict minerals" including gold, wolframite (a source of tungsten) and cassiterite (the main source of tin). These minerals are key components for manufacturers and suppliers of electronics, jewelry, construction tools, weapons systems, aerospace technology and many other industries. Much like the better-known "conflict diamonds" campaign, Congress' stated goal is to discourage companies from using "conflict minerals" and thus cut off, or at least limit, the financing source of these violent factions and thereby stem a devastating humanitarian crisis.

Reporting Conflict Minerals

To this end, Section 1502 applies to SEC reporting companies for which "conflict minerals" are necessary to the functionality or production of their products. "Conflict minerals" are defined as (a) gold, wolframite, cassiterite, columbite-tantalite (coltan) or their derivatives; or (b) "any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the DRC or an adjoining country." For those issuers who use "conflict minerals" that are necessary to the functionality or production of products they manufacture, Section 1502 requires that they annually disclose whether their "conflict minerals" originated in the DRC or an adjoining country.¹ If the "conflict minerals" originated in the DRC or an adjoining country, then the issuer must submit a report to the SEC and post on its company website a description of its measures to exercise due diligence on both the source and chain of custody of such minerals. These measures must include –

- an independent private sector audit of the annual report conducted in accordance with standards established by the Comptroller of the United States and rules recognized by the SEC in consultation with the Secretary of State;
- a description of the manufactured products that are not "DRC conflict free" (i.e., minerals that directly or indirectly finance or benefit armed groups in the DRC or an adjoining country);
- the country origins of the "conflict minerals;" and
- the specific efforts used to determine the mine and/or location of origin.

Section 1502 imposes new requirements that are difficult to assess at this time because key terms are undefined and there is little guidance as to the extent to which audit procedures and due diligence is required. Specifically, Congress has not defined the phrase "necessary to the functionality or production," so it is unclear how it will be interpreted. Further, it is unclear as to the extent to which issuers will have to certify their, and their suppliers', source of minerals and the extent to which an independent audit must be conducted. Accordingly, at this time it is difficult to assess the burden of compliance.

Steps to take before Section 1502 is implemented

Although the SEC has until April 17, 2011 to enact rules and regulations to implement Section 1502, it is clear that Section 1502 imposes new requirements for issuers who manufacture products that may use "conflict minerals." Those issuers affected by Section 1502 should begin considering implementation of internal procedures to effectively comply with these new requirements. Additionally, under a new process, the SEC is accepting comments prior to even proposing regulatory reform rules and amendments required under the Dodd-Frank Act, including Section 1502. Accordingly, an issuer or an industry trade association should consider submitting comments as soon as possible in order to voice its views. As the SEC recognizes, "the process of establishing regulations works best when all stakeholders are engaged and contribute their combined talents and experiences."

Venable's Legislative Group has significant expertise in advising clients regarding the "conflict diamonds" issue. Together with the firm's SEC/White Collar and Corporate Securities groups, Venable is well-positioned to help companies comment on, prepare for, and comply with the SEC's new rules on this subject.

1. Countries adjoining the DRC are: Sudan, Uganda, Rwanda, Burundi, United Republic of Tanzania, Zambia, Angola, Congo, Central African Republic

If you have friends or colleagues who would find this alert useful, please invite them to subscribe at www.Venable.com/subscriptioncenter.

CALIFORNIA MARYLAND NEW YORK VIRGINIA WASHINGTON, DC

1.888.VENABLE | www.Venable.com

©2010 Venable LLP. This alert is published by the law firm Venable LLP. It is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address.