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**SEC PROPOSES RULES TO IMPLEMENT**
**DODD-FRANK CONFLICT MINERALS DISCLOSURE REQUIREMENTS**
**January 5, 2011**

The Securities and Exchange Commission (the "SEC") recently proposed rules to implement the conflict minerals disclosure requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").[1] Section 1502 of Dodd-Frank (the "Conflict Minerals Provision") amended the Securities Exchange Act of 1934 (the "Exchange Act") to require annual disclosures from any company for which the use of conflict minerals is necessary to the functionality or production of a product manufactured by that company. The SEC anticipates that thousands of public companies will be affected by the new disclosure requirements due to the numerous commercial applications of conflict minerals.

The proposed rules would require any company that is subject to SEC reporting requirements pursuant to Section 13(a) or 15(d) of the Exchange Act and for which conflict minerals are necessary to the functionality or production of a product manufactured, or contracted to be manufactured, by that company to disclose in its annual report whether its conflict minerals originated in the Democratic Republic of the Congo or an adjoining country (collectively, the "DRC Countries"). If so, the company would be required to furnish a separate report as an exhibit to its annual report that would include, among other things, a description of the measures taken by the company to exercise due diligence on the source and chain of custody of its conflict minerals and an independent private sector audit of the company's report. The SEC is soliciting comments on the proposed rules through January 31, 2011 and is required to adopt final rules implementing the conflict minerals disclosure requirements no later than April 15, 2011. This client alert summarizes certain key aspects of the proposed rules.

**What Are Conflict Minerals?**

The Conflict Minerals Provision and the proposed rules define "conflict minerals" as cassiterite, columbite-tantalite, gold, wolframite, or their derivatives, or any other minerals or their derivatives determined by the U.S. Secretary of State to be financing conflict in the DRC Countries.[2] Lawmakers in the U.S., Canada and Europe have increasingly focused on the regulation of conflict minerals, as the illegitimate mining of these minerals is widespread and often finances armed groups that have helped to fuel extreme levels of violence in the eastern Democratic Republic of the Congo and contributed to a humanitarian crisis in the region.

**Overview of the Proposed Disclosure Requirements**

The proposed rules establish three steps for companies to follow in order to determine whether they are subject to the Conflict Minerals Provision and, if so, the scope of disclosure that is required.

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[1] Conflict Minerals (the "Release"), SEC Release No. 34-63547 (December 15, 2010), available at http://www.sec.gov/rules/proposed/2010/34-63547.pdf.

[2] Cassiterite is the metal ore that is most commonly used to produce tin, which is used in alloys, tin plating and solders for joining pipes and electrical circuits. Columbite-tantalite is the metal ore from which tantalum is extracted for use in such items as electrical components, including cellular telephones, computers, videogame consoles and digital cameras. In addition to jewelry, gold is often used in electronic, communications and aerospace equipment. Wolframite is a metal ore that is used to produce tungsten, which is used for metal wires, electrodes and contacts in lighting, electronic, electrical, heating and welding applications.

Step 1: Determine whether the company is covered by the Conflict Minerals Provision. Under the proposed rules, a company is only subject to the disclosure requirements of the Conflict Minerals Provision if (a) the company is required to file reports with the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act and (b) conflict minerals are necessary to the functionality or production of a product manufactured or contracted to be manufactured[3] by the company. If the company does not fit this definition, it would not be required to take any action, make any disclosures or submit any reports under the Conflict Minerals Provision. If, however, the company does meet this definition, it would move on to Step 2 to determine the extent of its disclosure obligations.

Step 2: Determine whether conflict minerals originated in the DRC Countries and provide resulting disclosure. Under the proposed rules, a company subject to the disclosure requirements of the Conflict Minerals Provision would be required to conduct a reasonable country of origin inquiry to determine whether its conflict minerals originated in a DRC Country. While the proposed rules do not state what constitutes a "reasonable" country of origin inquiry, the SEC has indicated that the reasonableness of the inquiry will necessarily depend on the company's particular facts and circumstances and does not require the company to make such a determination with absolute certainty. If the company determines that its conflict minerals did not originate in a DRC Country, it would be required to disclose that determination in its annual report and briefly describe the reasonable country of origin inquiry that it undertook to reach such a conclusion.[4] However, if the company determines that its conflict minerals did originate in one or more DRC Countries, or it is unable to conclude that its conflict minerals did not originate in a DRC Country, it would be required to disclose that conclusion in its annual report[5] and move on to Step 3 to prepare a Conflict Minerals Report.

Step 3: Prepare Conflict Minerals Report and conduct supply chain due diligence. The proposed rules require a company that concludes that its conflict minerals originated in a DRC Country, or that is unable to conclude that its conflict minerals did not originate in a DRC Country, to furnish[6] a Conflict Minerals Report as an exhibit to its annual report.[7] In the Conflict Minerals Report, the company would be required to provide, among other things, a description of the measures taken by the company to exercise due diligence on the source and chain of custody of its conflict minerals, which measures must include an independent private sector audit of the Conflict Minerals Report that has been certified by the company.[8] Under the proposed rules, the Conflict Minerals Report would also be required to contain descriptions of the Company's products

[3] The SEC has indicated that it intends the proposed rules to apply to companies that contract for the manufacturing of products over which they have any influence regarding the manufacture of such products, as well as companies selling generic products under their own brand name or a separate brand name that they have established, regardless of whether those companies have any influence over the manufacturing specifications of such products.

[4] The proposed rules would require companies to include this disclosure under a new Item 4(a) to Form 10-K entitled "Conflict Minerals Disclosure." The company would also be required to make the disclosure available on its Internet website, disclose in its annual report that the disclosure is posted on its Internet website and disclose the Internet address on which the disclosure is posted.

[5] The proposed rules would require this disclosure to be made in the same manner described in note 4 above.

[6] Under the proposed rules, the Conflict Minerals Report would not be "filed" for purposes of Section 18 of the Exchange Act and would therefore not be subject to the liability of that section of the Exchange Act unless the company explicitly states that such report is filed under the Exchange Act. However, companies that fail to comply with the proposed rules would still be subject to liability for violations of Exchange Act Sections 13(a) or 15(d), as applicable.

[7] In addition, the proposed rules would require the company to make the Conflict Minerals Report available on its Internet website, disclose in its annual report that the Conflict Minerals Report is available on its Internet website and disclose the Internet address on which the Conflict Minerals Report is posted.

[8] Because the Conflict Minerals Report (including the private sector audit report) would be furnished and not "filed" under the proposed rules, the independent private sector auditor would not assume expert liability under the Exchange Act and the company would not have to file a consent from the auditor unless the company specifically incorporates by reference the Conflict Minerals Report into a registration statement.

that are not "DRC conflict free,"[9] the facilities used to process those conflict minerals, the country of origin of those conflict minerals and the efforts to determine the mine or location of origin with the greatest possible specificity.

**Recycled and Scrap Materials**

Because of the difficulty of determining the sources of materials obtained through the recycling or scrap process, the proposed rules allow for different treatment of conflict minerals from recycled and scrap sources. Specifically, the proposed rules would require a company whose conflict minerals originated from recycled or scrap sources to disclose in its annual report that the company's conflict minerals were obtained from recycled or scrap sources, furnish a Conflict Minerals Report regarding those recycled or scrap conflict minerals and describe the measures taken to exercise due diligence in determining that its conflict minerals were recycled or scrap. In addition, the proposed rules would allow a company to state in its Conflict Minerals Report that its recycled or scrap materials are considered "DRC conflict free."

**Recommended Actions; Contact Information**

Companies must provide their initial conflict minerals disclosure and, if necessary, their initial Conflict Minerals Reports after their first full fiscal year following adoption of the SEC's final rules, which is expected to occur by April 15, 2011. In light of the proposed disclosure requirements, companies should consider taking the following steps:

- Evaluate whether conflict minerals are necessary to the functionality or production of a product manufactured or contracted to be manufactured by the company.
- If the company utilizes conflict minerals, consider the steps it will need to take to conduct a reasonable country of origin inquiry with respect to such products.
- If the company knows or suspects that it will be required to furnish a Conflict Minerals Report, begin to determine appropriate supply-chain diligence procedures and identify a third-party auditor to evaluate the process.[10]

If you have any questions regarding the SEC's proposed rules, please contact Elizabeth C. Southern, http://www.wcsr.com/elizabethsouthern, the principal drafter of this alert, or you may contact the Womble Carlyle attorney with whom you usually work or one of our Corporate and Securities attorneys at the following link: http://www.wcsr.com/profSearch?team=corporateandsecurities.



[9] Under the proposed rules, "DRC conflict free" means that a product does not contain conflict minerals that directly or indirectly finance or benefit armed groups in a DRC Country. Conflict minerals that a company is unable to determine did not originate in a DRC Country are not "DRC conflict free."

[10] For instance, the Organisation for Economic Cooperation and Development (the "OECD") is developing due diligence guidance for conflicts mineral supply chains. See footnote 145 of the Release.