



Corporate and Securities Law Alert

A Corporate Department Publication

June 2013

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Conflict minerals: Public and private companies should examine their supply chain now

Many companies have heard about the Securities and Exchange Commission's (SEC) conflict minerals rules, but they may not be aware that both public *and private companies* across a wide array of industries must be prepared to comply with these new disclosure rules and/or assist their customers in complying with them. Companies should conduct an inquiry now to ascertain whether any of their products contain minerals covered by the rules and, if so, determine the country of origin of the minerals.

The following alert describes the SEC conflict minerals rules in greater detail and provides some steps that companies can take now to be prepared to comply with the rules. Because each situation is unique, contact any of the attorneys listed at left or your representative at Porter Wright with questions or requests for specific recommendations about the best way to proceed.

What are the SEC conflict minerals rules?

In August 2012, the SEC promulgated [final rules](#) under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act requiring that public companies disclose on Form SD the country of origin of certain minerals used in the products they manufacture or contract to manufacture. The rules require companies to make a reasonable inquiry to determine whether certain minerals used in their products originate from the Democratic Republic of the Congo (DRC) or adjoining countries, which some believe are financing the conflict in the DRC.

The first conflict minerals reporting period for all public companies will be from Jan. 1, 2013 to Dec. 31, 2013, and the first specialized disclosure report on Form SD must be filed with the SEC on or before May 31, 2014. The SEC has prepared a [helpful flowchart](#) to guide companies to comply with the conflict minerals rules.

In October 2012, a group of business organizations filed suit against the SEC challenging the conflict minerals rules.¹ The case is currently pending. Should the outcome of this case change the compliance requirements of the rules, we will send an update informing you of the changes.

On May 30, 2013, the SEC issued [12 Frequently Asked Questions](#) providing guidance on various aspects of the conflict minerals rules.

¹ See National Association of Manufacturers, et al. v. U.S. Securities and Exchange Commission, No. 12-1422 (D.C. Cir., filed October 19, 2012).

What minerals are covered by the SEC conflict minerals rules?

The table below shows minerals covered by the SEC conflict minerals rules (designated minerals) and some non-exhaustive examples of their common uses:

Conflict mineral	Derivative metal	Common uses
Cassiterite	Tin	Solder, tin plating, tin chemicals, metal alloys (brass, bronze and pewter)
Columbite-tantalite	Tantalum	Electronic components, metal alloys
Gold	Gold	Jewelry, electronic components and wiring
Wolframite	Tungsten	Metal alloys, electronic components

The list of designated minerals may be expanded from time to time to include any other mineral or its derivatives determined by the U.S. Secretary of State to be financing the conflict in the DRC or adjoining countries.

Are my products covered by the SEC conflict minerals rules?

A product is covered by the SEC conflict minerals rules if it is:

- Manufactured or contracted to be manufactured by a company, and
- Necessary to the functionality or production of the product.

A company is considered to be “contracting to manufacture” a product if it has some actual influence over the manufacturing of that product. This determination is based on facts and circumstances, taking into account the degree of influence a company exercises over the product’s manufacturing.

A company is not deemed to have influence over the manufacturing if it merely:

- Affixes its brand, marks, logo or label to a generic product manufactured by a third party,
- Services, maintains or repairs a product manufactured by a third party, or
- Specifies or negotiates contractual terms with a manufacturer that do not directly relate to the manufacturing of the product.

Component parts manufactured by a supplier and contained in a company’s assembled product will be considered to be manufactured by that company. However, the SEC conflict minerals rules will not apply to product packaging, unless a company manufactures or sells packaging independent of any other product.

What do I need to do to determine if designated minerals originate from the DRC region?

If you are a public company that manufactures or contracts to manufacture products that contain the designated minerals (note that there is no *de minimis* exception), you are required to conduct a reasonable “country of origin” inquiry that must be performed in good faith and be reasonably designed to determine whether any of the designated minerals originated in the DRC region or are from scrap or recycled sources.

If your inquiry determines that either of the following are true:

- The company knows that the minerals *did not* originate in the covered countries or are from scrap or recycled sources, or
- The company *has no reason to believe* that the minerals may have originated in the covered countries or may not be from scrap or recycled sources,

you must disclose your determination, provide a brief description of the inquiry you undertook and file the results of your inquiry with the SEC on Form SD and post it on the company’s website with a link to the Form SD.



If your inquiry otherwise determines that both of the following are true:

- The company *knows or has reason to believe* that the minerals may have originated in the covered countries, and
- The company *knows or has reason to believe* that the minerals may not be from scrap or recycled sources,

you must conduct a due diligence investigation on the source and chain of custody of the designated minerals and file a Conflict Minerals Report with the SEC as an exhibit to the Form SD and post it on the company’s website with a link to the Form SD. The requirements of the due diligence investigation are complex. For more information about the process, please contact any of the attorneys listed on page one or your representative at Porter Wright.

I am a private company. Does this affect me?

Most likely, many private companies will be significantly affected by the SEC’s conflict minerals rules. Though private companies themselves do not have a reporting obligation or any duties under the rules, many private companies supply products to public companies – or supply to other private companies that then supply products to public companies. Public companies will need to ask their suppliers whether their products contain any designated minerals and whether such minerals originate from the DRC region for purposes of complying with their reporting obligation. Accordingly, suppliers – both public and private companies – need to conduct the same examination of their supply chain so that they are prepared to respond when customers inquire about conflict minerals.

What should I do now?

If you are a public or private company that manufactures or contracts to manufacture products, we suggest that you consider taking the following actions to be prepared to comply with the SEC conflict minerals rules:

- Create a team composed of representatives from your company’s purchasing, supply chain, manufacturing, engineering and legal departments to determine whether any of the products you manufacture or contract to manufacture contain any of the designated minerals. We recommend a product-by-product review with careful consideration of all contents of the product, including component parts.
- Ask suppliers whether their products contain any of the designated minerals and, if so, require them to provide the country of origin of the minerals. Consider asking suppliers to sign a certification that the products they supply to you do not contain any designated minerals or that the designated minerals do not originate from the DRC region.
- Include items regarding designated minerals and their country of origin in your standard supplier contract or supplier qualification questionnaire.
- Educate company employees about the conflict minerals rules so your team can identify issues immediately.

It is important to start this process now. Though the filing deadline for the first Form SD is not until May 31, 2014, companies that delay this process until April or May of 2014 will find it much more difficult to trace through their supply chain for products that were manufactured several months prior in 2013.

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