

## Conflict Minerals – Part I of III

---

### What You Need to Disclose

Section 1502 of the Dodd-Frank Act of 2010 required the Securities and Exchange Commission (SEC) to establish additional disclosure and reporting requirements to report the use of “conflict minerals” that are sourced from the Democratic Republic of Congo and several neighboring countries. For this purpose, “use” includes minerals necessary to the functionality of a product manufactured (or contracted to be manufactured) by an SEC reporting company or minerals used in production processes. The current list of “conflict minerals” includes gold, tantalum, tin and tungsten. It is possible that other minerals may be added to that list.

The SEC has not yet adopted the final rules, but it is expected to do so shortly after the August 22, 2012 open meeting at which the proposed rule is to be discussed.

Notwithstanding the fact that no final rule has been issued, a few reporting companies have elected to disclose, in their periodic reports, background about the proposed rule, the potential impact of the proposed rule, and – in some cases – actions they have taken to conduct due diligence regarding conflict minerals in their supply chains. To date, this disclosure has been included in risk factors and, in some cases, in the business section of the filing. The risk factors typically discuss:

- Raw material availability and prices and impact on operations
- Lack of suppliers who can verify that they are conflict-free
- Additional supply chain due diligence and compliance procedures
- Difficulty in verifying supply of conflict minerals to the source and risk of noncompliance with reporting requirements

When included in the business section, reporting companies usually address conflict minerals in sections dealing with:

- Raw materials supply
- Commodity price risk
- Regulatory compliance

Based on the requirements in the proposed rule, reporting companies should consider some combination of the following, if they are relevant, for inclusion in their periodic filings. Multiple risk factors are not essential as long as the relevant risks are discussed.

In a risk factor on supply of goods:

- Discuss sourcing and availability of supply
- State whether shortages and price fluctuations may occur as a result of a move to reduce or eliminate conflict minerals in the supply chain
- Discuss whether prices and availability of raw materials might impact profitability

In a risk factor on supply chain diligence and compliance process:

- Describe reasonable due diligence steps that have been taken or will be taken to determine whether conflict minerals are (a) necessary to the functionality or production of the reporting company's manufactured products (or products contracted to be manufactured) or (b) used in production processes
- Describe third party audits and third party verification, if expected
- Describe compliance process and cost of compliance
- Describe ability to identify sources of conflict minerals and verify chain of custody to the mine of origin
- State whether suppliers have been able to provide required information on sourcing
- Express inability to verify the origins of all conflict minerals used

In a risk factor on required disclosure and reporting:

- Identify which conflict minerals are relevant to the reporting company
- State whether reporting company is conflict-free
- If not conflict-free, confirm that reporting company will deliver a Conflict Minerals Report to the SEC
- Describe potential impact and penalties for noncompliance

In a risk factor on third party relationships:

- State whether key customers require supply of conflict-free goods
- Anticipate publicity and reaction by customers and investors to statements of ability or inability to comply with conflict minerals regulations

In a business section disclosure on raw materials and commodity price risk:

- Describe conflict minerals that are used and from where they are sourced
- Describe impact of conflict minerals regulations on availability and pricing of supply
- State whether number of conflict-free suppliers is limited
- Describe potential raw material price fluctuations resulting from prohibition on use of conflict minerals
- Any existing company policy or program addressing the use of conflict minerals

In a business section disclosure on regulatory compliance requirements: –

- Discuss compliance procedures
- Describe steps taken toward supply chain diligence and compliance with regulations

The rule ultimately issued by the SEC will likely be different in some way from the proposed rule – whether in scope, effective date or specific reporting requirements. But, regardless of the details, reporting companies must spend time and energy conducting supply chain due diligence before they can hope to craft responsive and informative disclosure about conflict minerals.



For further information about the conflict minerals reporting requirements, please contact the Squire Sanders lawyer with whom you usually work.

### Contacts

Dynda A. Thomas  
+1 216 479 8583  
dynda.thomas@squiresanders.com

Frank M. Placenti  
+1 602 528 4004  
frank.placenti@squiresanders.com

© Squire Sanders (US) LLP All Rights Reserved July 2012