




Conflict Minerals 101

Understanding Your Obligations Under Sec. 1502 of the Dodd Frank Act

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Agenda

Context

- Conflict in the DRC
- Dodd-Frank Act

The Rule

- Affected companies
- SEC disclosure

Impact

- Legal Developments
- Compliance Challenges

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Conflict in the Congo

Context





The Rule



Impact

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Growing Awareness

- United Nations reports (2001, 2008 and 2009) that minerals trade directly contributes to funding the war in the Congo.
- 2001 Coltan Boom Gorilla Bust Report, Di Caprio touts gorilla-friendly mobile phones
- 2003 Report from Fauna & Flora on "Coltan Mining in the DRC"
- 2009 bills introduced in House and Senate

Coltan, the 'blood mineral' of Congo

[A bloody connection to the Congo in every pocket...](#)



global witness

Congo's riches fuel its war

Smartphones: The New Blood Diamonds?

enough



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Wall Street Banking Crisis

Context



The Rule

Dodd Frank Wall Street Reform and Consumer Protection Act of 2010

Impact



- Section 1502: Conflict Minerals
- Added to Securities & Exchange Act of 1934
- S.E.C. issued final rule on August 22, 2012

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Why this rule?


Context

The Rule

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“—It is the sense of Congress that the exploitation and **trade of conflict minerals** originating in the Democratic Republic of the Congo **is helping to finance conflict** characterized by extreme levels of violence in the eastern Democratic Republic of the Congo, particularly sexual- and gender-based violence, **and contributing to an emergency humanitarian situation** therein”

- Dodd-Frank Sec. 1502(a)



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Affected Companies


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Rule applies to companies that meet all the following:

- Listed with the Securities and Exchange Commission (S.E.C.)
- Manufacture products, or contract to manufacture products
- Products contain conflict minerals that are ‘necessary to the functionality or production of that product’



* Source Schulte Roth & Zabel LLP

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“Conflict minerals”

Context

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Conflict minerals, as defined:

- Gold 
- Tantalum | From columbite-tantalite (coltan)
- Tin | From cassiterite
- Tungsten | From wolframite 


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Uses of 3TG and % from DRC

Metal	Industries Using the Metal	Common Applications	Commercial Uses*	% World Supply from DRC
Tin	<ul style="list-style-type: none"> Electronics Automotive Industrial equipment Construction 	<ul style="list-style-type: none"> Solders for joining pipes and circuits Tin plating of steel Alloys (bronze, brass, powder) 	Cassiterite	5%
Tantalum	<ul style="list-style-type: none"> Electronics Medical equipment Industrial tools and equipment Aerospace 	<ul style="list-style-type: none"> Capacitors (in most electronics) Cartridge tools Jet engine components 	Coltan (columbite-tantalite)	15-20%
Tungsten	<ul style="list-style-type: none"> Electronics Lighting Industrial machinery 	<ul style="list-style-type: none"> Metal wires, electrodes, electrical contacts Heating and welding applications 	Wolframite, Scheelite, Ferberite, Hübnerite	0.60%
Gold	<ul style="list-style-type: none"> Jewelry Electronics Aerospace 	<ul style="list-style-type: none"> Jewelry Electric plating and IC wiring 	Various free and combined forms	0.5-2%

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Covered Countries




The Democratic Republic of the Congo (DRC) or an adjoining country:

- Angola
- Burundi
- Central African Republic
- Republic of the Congo
- Rwanda
- South Sudan
- Tanzania
- Uganda
- Zambia

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S.E.C. Final Rule | Guidelines



Step 1 — Step 2 — Step 3

Step 1
Determine if you are subject to this rule


Step 2
Determine whether your conflict minerals originate in the Covered Countries;
Specialized Disclosure

- Form SD

Step 3
The Conflict Minerals Report and supply chain due diligence

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S.E.C. Final Rule | Guidelines



Step 1 — Step 2 — Step 3

Step 1


Determine if you use conflict minerals that are:

...“necessary to the functionality or production of a product” that you manufactured “or contracted to be manufactured”...

- Contained in the product, and
- Intentionally added
- Necessary to the generally expected function
- The mineral is necessary to produce the product

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S.E.C. Final Rule | Guidelines



Step 1 — Step 2 — Step 3

Step 1


Determine if you use conflict minerals that are:

...“necessary to the functionality or production of a product” that you manufactured “or contracted to be manufactured”...

- Degree of influence over the materials, parts, ingredients or components
- Not included: specification or negotiation of contractual terms with a manufacturer; affix brand, marks, label, logo; service, maintenance or repair.

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S.E.C. Final Rule | Guidelines



Step 1 — Step 2 — Step 3


Step 1

No de minimis exception.



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Step 1 — Step 2 — Step 3

Step 1


If you do **not** use conflict minerals that are:

...“necessary to the functionality or production of a product” that you manufactured “or contracted to be manufactured”...

...then you are **not** required to take any action, make any disclosures, or submit any reports under the final rule!

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S.E.C. Final Rule | Guidelines



Step 1 — Step 2 — Step 3

Step 2

Determine whether your conflict minerals originate in the Covered Countries; Specialized disclosure



A “reasonable country of origin inquiry” is required to determine whether the conflict minerals originated in a covered country or are from recycled or scrap sources

- Performed in good faith
- Cannot ignore red flags

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Filing Information

Filing information

- The required conflict mineral information must be filed with information pertaining to *the calendar year in which the manufacture of the product that is subject to this rule is completed.*
- The final rule exempts any conflict minerals that are outside the supply chain prior to January 31, 2013

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Reports

Form SD includes the 'specialized disclosure report.' Every issuer that gets to step two must file this.

Form SD
Specialized Disclosure Report

The 'Conflict Minerals Report' is an exhibit to Form SD. Not everyone must file the CM Report.

Conflict Minerals Report

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S.E.C. Final Rule | Guidelines

The Conflict Minerals Report and supply chain due diligence

"Due Diligence" on the source and chain of custody

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OECD Due Diligence Guidance

On 22 August 2012, the US Securities and Exchange Commission recognized the OECD Guidance as an international framework for due diligence measures undertaken by companies that are required to file a conflict minerals report under the final rule implementing sec 1502 of the Dodd-Frank legislation.

<http://www.oecd.org/daf/inv/mne/mining.htm>

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S.E.C. Final Rule | Guidelines

"Due Diligence" includes:

- Framework:** International recognized framework (OECD)
- Audit:** Private sector audit in accordance with GAO standards
- Conflict Minerals Report, include:**
 - Auditor & certification of auditor,
 - Description of products that have not been found to be 'DRC conflict free'
 - Facilities used to process the minerals
 - Country of origin of the minerals
 - Your efforts to determine the mine/location of origin
- Website:** Disclose your conflict minerals disclosure or your Conflict Minerals Report on your website for one year

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SEC Final Rule: 3 Steps

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Step 1	Step 2	Step 3
Determine if subject to the Rule • File reports with SEC? • Manufacture or contract to manufacture? • CMs necessary to the functionality or production of your product?	Conduct a Reasonable Country of Origin Inquiry (RCOI) • Minerals may have originated in a covered country, and • Not from recycled/scrap sources? • Red flags?	Conduct Due Diligence • Exercise Due Diligence on the source & chain of custody of minerals. • Are your minerals from scrap/recycled sources, or from outside the covered countries?
No Rule does not apply	Yes File Form SD (Conflict Mineral Disclosure): • Your determination • Describe RCOI + Describe DD	Yes File Form SD with Conflict Mineral Report: • Products with CMs • Country & facilities • Audit

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Reporting Timelines

- File Form SD specialized disclosure report annually.
 - Covers the preceding calendar year.
- The Conflict Minerals Report, if you need to provide one, will be an exhibit to your specialized disclosure report on Form SD.
- Form SD is filed with the S.E.C.
- If you acquire a company, you may be able to delay reporting on that company's products until a following reporting period.

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SEC Final Rule: Form SD

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[Form SD text from the SEC Final Rule]

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM SD
SPECIALIZED DISCLOSURE REPORT

(Exact name of the registrant as specified in its charter)

<small>(State or other jurisdiction incorporation or organization)</small>	<small>(Commission File Number)</small>	<small>(IRS Employer Identification No.)</small>
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(Address of principal executive offices)

(Zip code)

(Name and telephone number, including area code, of the person to contact in connection with this report.)

Check the appropriate box to indicate the rule pursuant to which this form is being filed, and provide the period to which the information in this form applies.

___ Rule 13p-1 under the Securities Exchange Act (17 CFR 240.13p-1) for the reporting period from January 1 to December 31, _____.

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The Audit

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Audit

The audit's objective is to express an opinion or conclusion as to whether:

- The **design** of the issuer's due diligence measures, as set forth in the Conflict Minerals Report, is in conformity with the criteria set forth in the nationally or internationally recognized due diligence framework used, and
- Whether the issuer's description of the due diligence measures it performed as set forth in the Conflict Minerals Report is consistent with the due diligence process that the issuer undertook.
- The audit standards are established by the GAO.

Was the due diligence designed to conform to a framework?

Does the description of process followed match the due diligence?

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Transition Period

- Two Years**
 - Large Filers
- Four Years**
 - Small Filers

"DRC Conflict Undeterminable"

You are not sure of the origin of your conflict minerals, or you know they originated in the covered countries but you can't determine if they benefitted armed groups.

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Reporting Summary

Conflict Minerals Source	Product Status from RCOI and/or Due Diligence		
	Conflict Free	Not Conflict Free	Undeterminable (Acceptable for first 2 years for large filers and 4 years for small filers)
No Conflict Minerals	• No Form SD Reporting Required		
From Scrap or Recycled Minerals	• File Form SD	N/A	
Mined Outside DRC Covered Countries	• File Form SD		
Mined Inside DRC Covered Countries	• File Form SD • Attach CM Report • Independent Audit	• File Form SD • Attach CM Report • No Audit Required	

* Based on pages 1, 26, 152 and 346- 347 of SEC Final Rule

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Legal Developments



Court Challenge


- The Conflict Minerals Rule was challenged in court by the Chamber of Commerce, NAM and the Business Roundtable
 - October, 2012 - Challenge Filed
 - July 23, 2013 - District Court Upholds Conflict Minerals Rule
 - August 2013 – Appeal Filed - Decision Expected in 2014


Other Legislative Developments

- State Laws - CA, MD, MA (Prop) –
 - Companies who do not comply with SEC’s conflict minerals rule are ineligible to contract with state agencies for certain goods or services
- Canada – Legislation under consideration
- European Union – Developing EU strategy by the end of the year
 - Scope may be broader than the US


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Challenges





Context



The Rule




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Practical Challenges Companies are Facing

- Communicating with supply chain
- Going past the first tier
- Getting responses from non-obligated parties
- Keeping track of all the information
- Responding to a wide variety of forms
- Educating global suppliers
- Managing public information

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Resources



- S.E.C. Final Rule on Section 1502 of the Dodd-Frank Act
www.sec.gov/rules/final/2012/34-67716.pdf
- OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas
www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/46740847.pdf
- Government Accountability Office (GAO) - Government Auditing Standards
www.gao.gov/assets/590/587281.pdf
- Schulte Roth & Zabel LLP – Conflict Minerals Resource Center
http://www.srz.com/conflict_minerals_resource_center/
- American Apparel & Footwear Association – Conflict Minerals Guidance
<https://www.wewear.org/csr/conflict-minerals/>
- Electronics Industry Citizenship Coalition - Extractives and Conflict Minerals Resources
<http://www.eicc.info/extractives.shtml>

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Q & A



Thank You!

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