# The New Conflict Minerals Rules: Surprisingly Broad in Application

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As part of its implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the SEC recently issued a final rule concerning the disclosure on a new Form SD of "Conflict Minerals" used in the manufacture of products by public companies. The rule is broad in its application and requires a multi-step analysis by all companies who either manufacture or, importantly, contract for the manufacture of a product where conflict minerals are "necessary to the functionality or production" of that product. While the rule has been challenged in court, a result is not expected until the middle of 2013 at the earliest, and, while it is possible it could affect timing or implementation of the rule, the outcome of the challenge is uncertain.

Currently, conflict minerals are defined to include cassiterite, columbite-tantalite, gold and wolframite, as well as their "3T" derivatives, which include tantalum, tin and tungsten sourced from the Congo and any adjoining country. However, the State Department has the authority to expand or contract this definition in the future. As defined, a very broad group of products may contain conflict minerals. A partial list includes: electronic components and circuits, packaging, pigments, metal wiring, lighting contacts, heating elements, jewelry and electrodes.

The SEC has provided a flow chart, attached to this email, summarizing the steps that companies must take to analyze how the conflict mineral rule applies, but the basic steps are as follows:

1. Determine Whether Company is Subject to the Conflict Minerals Rule

If conflict minerals are "necessary to the functionality or production of a product manufactured or contracted by [an] issuer to be manufactured", then the conflict minerals rule applies, and the analysis continues with Step 2. If this definition does not apply, then there is no requirement to take any action, make any disclosures or submit any reports under the conflict minerals rule.

2. Reasonable Country of Origin Inquiry

   If the definition in Step 1 applies, an issuer must conduct an inquiry regarding the origin of its conflict minerals that is “reasonably designed to determine whether any of its conflict minerals originated in the Covered Countries or are from recycled or scrap sources” and must perform the inquiry in good faith. If the issuer can determine that its conflict minerals did not come from covered countries or did come from scrap/recycled sources, that information and a description of the inquiry process must be disclosed on the new Form SD, due each May 31 beginning in 2014. If the inquiry is inconclusive or otherwise does not permit the issuer to determine that its conflict minerals *did not* come from covered countries or *did* come from scrap/recycled sources, it continues to Step 3.

3. Exercise Due Diligence on Source and Chain of Custody and Provide Conflict Minerals Report

   If the issuer is unable to determine that its conflict minerals did not come from covered countries or did come from scrap/recycled sources, as described in Step 2, the issuer must then undertake due diligence on the source and chain of custody of its conflict minerals. This additional due diligence must comply with a due diligence framework approved by the State Department. The issuer is required provide a Conflict Minerals Report describing these due diligence measures, among other matters, as an exhibit to its Form SD. Generally this report must be audited.

Each of the steps above requires a close, fact based analysis of whether a particular situation fits the definitions in the rule. A number of the critical terms in the rule, such as contract to manufacture, are undefined with limited guidance at this point from the SEC. Nevertheless, the new rule applies to products in the chain of production starting on January 31, 2013. Companies should therefore begin a threshold analysis of whether they manufacture or contract to manufacture products for which conflict minerals are necessary to the functionality or production. If the answer is yes, conflict mineral disclosure requirements will apply, and they must begin scrutinizing the origin of the conflict minerals in their products for the 2013 calendar year.

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