



**From:** Fern Abrams  
**To:** Interested Members  
**Date:** October 21, 2011  
**Subject:** October 18 SEC Panel Discussion of Conflict Minerals Regulations

On October 18, 2011 the SEC held a four hour panel discussion on conflict minerals. The purpose of the panel discussions appeared to be collection of further information and opinions regarding provisions of the forthcoming rules required under Section 1502 of the Dodd-Frank Act. Panel participants included a variety of stakeholders representing mining, industry, investors, and non-governmental organizations. A list of participants can be found at

<http://www.sec.gov/spotlight/conflictminerals/conflictmineralsroundtable101811-participants.htm>.

Questions were posed to the panel by SEC staff and SEC chairman Mary Schapiro. Also in attendance were Commissioners Aguillar, Paredes, and Walter. The panel was recorded and can be watched here:

<http://www.sec.gov/news/otherwebcasts/2011/conflictmineralsroundtable101811.shtml>.

Most of the questions posed to the panel reiterated issues that were raised in the Commission's December 23, 2011 proposed rule. It was unclear why the panel was held at this time, but one could infer that the SEC is still unclear as to what direction it should move and was hoping to find some type of consensus.

One positive note was that Commissioner Walter chimed in to ask for details regarding industry's request for more implementation time, indicating that she is giving serious consideration to support of a phased-in approach to the regulations. Panelists also seemed to be in agreement on a number of issues including: support of the OECD guidelines, that audits do not necessarily need to be carried out by accountants, and the audit should focus on the design of a due diligence process rather than the contents of a conflict minerals report, that a single, synchronized filing date would reduce the burden on the supply chain, and that there should be an amnesty or future start date to allow for stockpiled materials.

The SEC has reopened the record and will take public comments on issues raised during the roundtable until November 1, 2011. IPC will submit brief comments re-emphasizing the points made in our March 2011 comments as they relate to the issues raised in the panel discussion.

***Panel One: What is covered by the rule and what steps will be required to comply with the rule***

In their opening remarks, industry and mining representatives emphasized support for the goals of the legislation but emphasized the lack of traceability infrastructure; the need for flexibility; a desire for more examples of acceptable country of origin inquiries and due diligence ; complex and large supply chains, and filing issues. NGO remarks focused on the atrocities, progress made already by EICC/GeSI, and the need to move forward quickly.

Questions asked of the first panel were:

- Section 1502 defines conflict minerals as derivatives of Cassiterite, Wolframite, and Columbite-Tantalite, and Gold. In addition to the 3Ts and gold, niobium, iron, uranium and other metals are refined from these minerals. Many commenters have asked the SEC to specify the 3Ts and gold as the focus of the regulation. Would this be workable?
- Section 1502 does not define manufacturing. Should mining be included in a definition of manufacturing?
- How should the SEC define/explain the requirements that the 3Ts or gold are “necessary to the functionality” of covered products? Should manufacturing tools be included? What about ornamentation?
- The proposed rules do not include de-minimis. Commenters suggested two types of de-minimis, one based on de-minimis levels of conflict minerals in products, and an alternative based on companies using only small amounts of conflict minerals. Should there be a de-minimis?
- Should the rule apply to companies that do not have control over the product? Should the rule apply if a company’s name is on the product or only if they have control over materials and material sources?
- Should the Commission define or further specify what constitutes a “reasonable country of origin inquiry?”
- How much transition time is needed for industry to develop needed infrastructure. This question was also repeated by Commissioner Walter indicating serious consideration by the SEC of some type of phased approach.

Overall, this panel lacked consensus on most issues. While industry and investor groups supported a focus on the 3Ts and gold as the main economic focus, the NGOs opposed any changes to the legislative language as it might “be confusing.” Regarding “necessary for the functionality,” industry panel participants urged the exclusion of tools and simple, clear-cut tests, while the NGOs stated that the proposed rule is sufficiently clear, while investors opposed any type of de-minimis exclusion. Both investors and NGOs strongly opposed any attempt to exempt companies that put their name on products they don’t control stating that the full value chain, including private labels, must be included. Panelists did unanimously support the idea of the SEC better defining *reasonable country of origin inquiry* with industry also making the point that more time is needed for industry to develop infrastructure. Investors and NGOs predictably opposed the provision of additional time citing the EICC/GeSI smelter audit program and stating that Apple has already traced their full supply chain.

***Panel Two: What steps will be required to comply with the rule and reporting***

The second set of panelists’ opening remarks was similar to the first panels and somewhat predictable. Benedict Cohen of Boeing made an excellent case for phase-in, allowing reliance on suppliers and flow-down contract provisions, the need for an interim category of indeterminate country of origin, the need to ensure consistency with the OECD, and the complexity and length of the supply chain. Panelists also cited a need for synchronized reporting schedules, the need to exempt existing stocks, the need for more reasonable treatment of recycled materials. Panelists also raised concerns about the lack of clarity regarding required auditing.

Questions asked of the second panel were:

- What is appropriate due diligence? Should the SEC specify required due diligence? Should the SEC reference the OECD guidance? What would make auditing more cost effective?
- Should the rule for gold be delayed due to the delay in OECD guidance and further complexity of the supply chains?
- What is the appropriate scope of the private sector audit? Would conformity to the OECD management processes be an appropriate scope?
- There is significant concern about the cost of audits. The GAO audit standards allow two types of audits, “test audits” must be performed by CPAs, while “performance” audits can be performed by others. Would allowing non-CPAs to perform audits increase the number of available auditors and lower the price? Would non-CPA auditors need a standard to audit too?
- Should an audit and/or Conflict Minerals Report be required for recycled and scrap materials? What should be in the report?
- Section 1502 requires annual submission with the filers annual report. Should there be a new form?
- Would a synchronized calendar year end cause any problem as it may be separate from other reporting?
- Should there be a transition rule for stockpiled materials?

Many panelists supported the OECD Guidelines and the provision of more guidance, examples, and a safe harbor. Most panelists did not support additional time for gold stating that all minerals have complex supply chains and that the OECD guidance is due out shortly. Panelists generally agreed that audits do not necessarily need to be carried out by accountants, and the audit should focus on the design of a due diligence process rather than the contents of a conflict minerals report. The NGOs supported the SEC proposals for a fully audited CMR report, while the remainder of the panel supported less onerous inquiry with full disclosure of the inquiry. Most of the panelists, except for the NGOs, supported additional time for reporting. The panelists agreed that a single, synchronized filing date would reduce the burden on the supply chain. NGOs supported inclusion of reports with the filer’s 10K to bolster credibility of the report, while industry supported a separate, later report. Panelists agreed that there should be an amnesty or future start date to allow for stockpiled materials.