

SEC Staff Issues FAQs Regarding Conflict Minerals Disclosure

On May 30, 2013, the SEC's Division of Corporation Finance issued a set of FAQs to provide guidance on various aspects of the rules governing disclosure requirements applicable to the use of conflict minerals from the Democratic Republic of the Congo or adjoining countries (Conflict Mineral Rules).

The [FAQs](#) provide a number of useful interpretations pertaining to the Conflict Mineral Rules, (originally discussed in our September 2012 alert, "[SEC Adopts Disclosure Rules on Conflict Minerals](#)"), consisting of the following:

Voluntary Filers

The Conflict Mineral Rules apply to all issuers that file reports under Exchange Act Sections 13(a) or 15(d), including voluntary filers (however, registered investment companies that file reports pursuant to Rule 30d-1 under the Investment Company Act are not subject to the rule).

Consolidated Subsidiaries Covered

The manufacturing and contracting to manufacture activities of an issuer's consolidated subsidiaries are subject to the same requirements as the issuer's activities.

Generic Components

An issuer is required to conduct a reasonable country of origin inquiry with respect to conflict minerals included in generic components included in products it manufactures or contracts to manufacture. As stated in the FAQs, there is no distinction between the components of a product that an issuer directly manufactures or contracts to manufacture and the "generic" ones it purchases to include in a product.

Packaging

The packaging or container sold with a product is not considered to be part of the product, even where necessary to preserve the product's usability. However, packaging or containers sold separately are considered products under the Conflict Mineral Rules.

Equipment Used in the Provision of Services

Issuers that manufacture or contract for the manufacture of equipment used by the issuer to provide a service are not subject to the Conflict Mineral Rules (the question asked whether issuers that operate cruise lines would be required to file reports regarding the conflict minerals in the cruise ships they manufacture or contract to have manufactured). The FAQs specify that the staff would not object if issuers took the position that the Conflict Mineral Rules do not apply to the equipment that they manufacture or contract to have manufactured "if that equipment is used for the service provided by the

issuer and the equipment is retained by the service provider, is required to be returned to the service provider, or is intended to be abandoned by the customer following the terms of the service.”

Tools, Machines and Other Equipment

A Form SD will not be required for an issuer that manufactures or contracts to have manufactured tools, machines or other equipment that contain conflict minerals for use in the manufacture of its products, as those items are not deemed to be “products” of that issuer. In addition, the FAQs note that the staff will not view their later entry into the stream of commerce as transforming them into products of that issuer.

IPOs

With respect to IPOs, the issuer may start reporting for the first reporting calendar year that begins no sooner than eight months after the effective date of its IPO registration statement.

Failure to File Form SD and S-3 Eligibility

The failure to timely file a Form SD regarding conflict minerals will not cause an issuer to lose eligibility to use Form S-3.

Affixing Marks

Etching or otherwise marking a generic product manufactured by a third party with a logo, serial number or other identifier is not considered to be “contracting to manufacture” a generic product for purposes of the rules.

Description of Products

Where a description of products must be included in a Form SD, the FAQs state that model numbers are not required, and that the rule permits an issuer to describe its products “based on its own facts and circumstances,” in terms commonly understood within its industry. However described, the Conflict Minerals Report must state clearly that the products “have not been found to be ‘DRC conflict free’” or are “DRC conflict undeterminable,” as applicable.

Mining

With respect to mining, Form SD states that an issuer that mines conflict minerals would not be considered to be manufacturing those minerals for purposes of the rule. This instruction excludes all of the activities customarily associated with mining from the rule, including gold mining of lower grade ore.

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