SEC Required Conflict Minerals Disclosure and Report Compliance

On August 22, 2012, the Securities and Exchange Commission (the "*SEC*") adopted rules implementing Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("*Dodd Frank*").[1] The rules (the "*Conflict Minerals Rules*" or the "*final rules*") implementing Section 1502 of Dodd-Frank relate to reporting requirements regarding "conflict minerals"[2] originating in the Democratic Republic of the Congo (the "*DRC*") and "adjoining countries"[3] (together, the "*Covered Countries*"). Congress enacted Section 1502 of Dodd Frank in response to concerns that the exploitation and trade of conflict minerals by armed groups is helping to finance conflict in the DRC and is contributing to an emergency humanitarian crisis by increasing accountability for parties involved in the supply chains for these products.[4] Section 1502 inspired debate when enacted, which intensified with the issuance of proposed SEC rules in December 2010 (the "*Proposed Rules*").[5] According to the SEC's adopting release, conflict minerals are widely used in the global economy. For example, tantalum is used in electronic components, such as those found in mobile telephones, computers, videogame consoles and digital cameras, and in carbide tools and jet engine components. Tin is used in alloys, tin plating and solders for joining pipes and electronic circuits. Gold is used in jewelry and electronics, communications, and aerospace equipment. Tungsten is found in metal wires, electrodes and contacts in lighting, and in other electronic, electrical, heating and welding applications. Accordingly, the SEC expects the final rules to impact approximately 40% of all reporting companies.[6]

The final rules will become effective 60 days after they are published in the *Federal Register*.[7] The disclosures required under the final rules will be filed using a new form, Form SD (discussed more fully below). The first reports on Form SD will be due May 31, 2014 and will cover the calendar year ended December 31, 2013.

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1 Conflict Minerals, Release No. 34-67716 (Aug. 22, 2012) (the "Adopting Release"), *available at* http://www.sec.gov/rules/final/2012/34-67716.pdf. "Item" numbers herein refer to the text of the final rule, which appears at pages 342-55 of the SEC Release. Commissioners Paredes and Gallagher voted against the rules.

2 "Conflict minerals" are defined to mean columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives. Section 13(p)(5) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 1502(e)(4) of the Dodd-Frank Act. The final rules modify this definition slightly by stating that the derivatives are limited to tantalum, tin, and tungsten. Item 1.01(d)(3) of Form SD. The Secretary of State can designate additional conflict minerals by making a determination that the minerals or their derivatives are financing conflict in the DRC or an adjoining country. To date, the Secretary of State has not made such a determination.

3 An "adjoining country" is defined under Section 1502 and in the new rules as "a country that shares an internationally recognized border with the" DRC. Currently, the covered countries are the Democratic Republic of the Congo, Angola, the Republic of the Congo, Uganda, Rwanda, Burundi, Tanzania, Zambia, South Sudan, and the Central African Republic. See Section 1502(e)(1) of the Dodd-Frank Act and Item 101(d)(1) of Form SD.

4 *See*, *e.g.*, letter from Barbara Boxer, Frank R. Lautenberg, Barbara A. Mikulski, Sheldon Whitehouse and Ron Wyden, U.S. Senators, to Mary L. Schapiro, Chairman, SEC (Feb. 16, 2012).

5 Conflict Minerals, Release No. 34-63547 (Dec. 15, 2010), *available at* http://www.sec.gov/rules/proposed/2010/34-63547.pdf ("Proposed Rules ").

6 The SEC estimates that approximately 5,994 companies will be affected by the final rules and therefore required to file a Form SD; 4,496 of such companies will be required to file a Conflict Minerals Report with an independent private sector audit. According to the SEC, the total cost of initial compliance with the final rules would be between $3.0 and $4.0 billion for all companies. The SEC further estimates that the total on-going compliance cost is likely to be in the range of $207 million to $609 million. Such estimated costs, which were addressed in numerous submissions by commentators, are vastly higher than those included in the proposing release.

7 The final rule will be added to the Code of Federal Regulations, 17 C.F.R. §§ 240, 249b.

The final rules divide the disclosure requirements created by Section 1502 into a three-step compliance process as follows:

- *Step 1:* Each company must first determine whether it is subject to the Conflict Minerals Rules. Step 1 is discussed in Section A below.

- *Step 2:* A company that is subject to the Conflict Minerals Rules must undertake a reasonable country of origin inquiry to determine whether the conflict minerals it uses originated in the Covered Countries or from recycled or scrap sources. Step 2 is discussed in Section B below.

- *Step 3:* A company that determines that its conflict minerals did originate, or has reason to believe that such minerals may have originated, in the Covered Countries and are not from recycled or scrap sources, is required to conduct further due diligence on the source and chain of custody of its conflict minerals. Depending on the findings of the due diligence, the company may be required to file a conflict minerals report ("*Conflict Minerals Report*") containing certain additional disclosures and an independent private sector audit. Step 3 is discussed in Section C below.

We discuss this analysis and the specific disclosure requirements in detail below. The SEC included a flowchart in the adopting release to facilitate a company's understanding of the procedures under the final rules a copy of which has been attached to this memorandum.[8]

I. Step One: Determine if the Conflict Minerals Rules Apply

A company must determine if it is subject to the Conflict Minerals Rules based on its use of conflict minerals. A company is not required to comply with the conflict mineral disclosure requirements if it is able to answer "no" to any of the following questions:

- Does the company file reports with the SEC under Section 13(a) or 15(d) of the Exchange Act?

- Does the company manufacture or contract to manufacture products?

- Are conflict minerals necessary to the functionality or production of the product manufactured or contracted to be manufactured?

Unless the conflict minerals are necessary to the functionality or production of a product which is manufactured by the company or with respect to which the company has contracted to manufacture, then the company is not required to undertake a country of origin analysis (described in Section B below), make any disclosures or submit any reports on Form SD.

A. Necessary to Functionality or Production; No De Minimis Exemption

The final rules also do not define when a conflict mineral is necessary to the functionality or production of a product, but the SEC has provided guidance with respect to the topic. The Adopting Release states that some amount of a conflict mineral must actually be contained in a product for the mineral to be considered necessary to the functionality or production of the product. Thus, a conflict mineral used in the production of a product, but not

[8] See Adopting Release at 33.

present in the product itself—such as a catalyst, no part of which remains in the final product—would not be considered necessary to the functionality or production of the product.[9] The SEC also recommends that companies assess whether the conflict mineral is intentionally included in the actual production process, rather than used in a tool, machine or indirect equipment (such as a computer or a power line) used to produce the product.

In determining whether a conflict mineral is necessary to the functionality of a product, the SEC instructs that the following factors should be considered:

- if the conflict mineral is necessary to any of a product's generally expected functions, uses or purposes, it is necessary to the functionality of the product even if it is not necessary to the product's other functions, uses or purposes;

- if the conflict mineral is incorporated for purposes of ornamentation, decoration or embellishment, it is more likely to be necessary to the functionality of the product if a primary purpose of the product is ornamentation or decoration; and

- if a product has multiple generally expected functions, uses or purposes (for example, a smart phone that can be used to make and receive phone calls, access the internet and listen to stored music), the Conflict Minerals Rules apply if conflict minerals are necessary to any of these functions. [10]

The SEC emphasizes that the analysis must be based on the particular facts and circumstances applicable to the product.

A company could be subject to the rules based on any amount of conflict minerals in its products, provided that the conflict minerals are necessary to the functionality or production of the product. In other words, there is no *de minimis* exemption for products that contain only trace amounts of conflict minerals.[11]

B. Products "Contracted to Be Manufactured"

The Conflict Minerals Rules apply to products "manufactured or contracted to be manufactured" by a company if those products use conflict minerals. While the SEC defers to commonly accepted definitions of the term "manufacture," the adopting release suggests that a company may be considered to "contract to manufacture" depending upon the "degree of influence" it exercises over the "materials, parts, ingredients, or components to be included in any product that contains conflict minerals or their derivatives." The SEC stresses that the analysis is based upon the particular company's facts and circumstances as well as its business and industry.[12] More specifically, the SEC states that the following activities do not fall within the meaning of the phrase: (i) specifying or negotiating contractual terms that do not relate directly to the manufacturing, unless there is such a degree of influence exerted as to be practically equivalent to contracting on terms that directly relate to the manufacturing; (ii) affixing one's brand, logo, or label to a generic product manufactured by a third

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9 *See* Adopting Release at 83, 85.

10 *See* Adopting Release at 87-88.

11 Although many commenters requested a *de minimis* exception, the SEC declined to adopt such an exception in the final rules, citing the lack of authority for such an exception in the statutory language.

12 *See* Adopting Release at 61-67.

party (provided there is no involvement in the manufacturing beyond affixing a brand, logo or label); or (iii) servicing, maintaining, or repairing a product manufactured by a third party.[13]

C. Conclusion of Step 1: Conflict Minerals Rule Apply

If it is determined pursuant to the analysis in subsections (a) and (b) above that conflict minerals are necessary to the functionality or production of a product manufactured or contracted by the company, the company will be required to file conflict minerals information with the SEC on a new Form SD. The contents of a company's Form SD are dependent on the company's determinations with regard to the remaining two steps outlined in Sections B and C below. Conflict minerals disclosure on Form SD will be with regard to a calendar year period and must be filed with the SEC no later than May 31 of the following calendar year. For example, with respect to 2013, the first calendar year that will require Form SD reporting, a company's report for 2013 will be due no later than May 31, 2014. The final rules exempt any conflict minerals that are "outside the supply chain"—if it was smelted, refined or has already been removed from a Covered Country—prior to January 31, 2013.

II. Step Two: Conducting a Reasonable Country of Origin Inquiry

A. What Constitutes a Reasonable Country of Origin Inquiry?

If a company determines that conflict minerals are necessary to the functionality or production of its products as described in Section A above, it next must determine whether such conflict minerals originated in any Covered Country, or are from recycled or scrap sources, by conducting, in good faith, a reasonable country of origin inquiry that is reasonably designed to reach this determination.[14] The SEC did not specify the specific steps that a company must take to satisfy this requirement.[15] The SEC stated that the scope of the inquiry will depend on each company's particular facts and circumstances and may vary based on a company's size, products, relationships with suppliers, the available infrastructure at any given time or other factors. However, the final rules do contain some general standards concerning the country of origin inquiry.

A company may satisfy the reasonable country of origin inquiry requirement if it obtains reasonably reliable representations, directly from the facility at which its conflict minerals were processed or indirectly through its immediate suppliers, that those conflict minerals did not originate in any Covered Country or that they came from recycled or scrap sources. A company is not required to obtain representations from all of its suppliers as long as its inquiry is conducted in good faith and otherwise satisfies the requirements of the rules.[16] The Adopting Release also notes two examples of circumstances that, absent other information, should give a company reason to believe that its conflict minerals may have originated in the covered countries: (i) a company becomes aware that some of its conflict minerals were processed by smelters that sourced from many countries,

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[13] *See* Adopting Release at 65.

[14] Item 1.01(a) of Form SD.

[15] Adopting Release at 147. The SEC has also said that the reasonable country of origin inquiry does not require a company to determine with absolute certainty whether conflict minerals originated in the covered countries. Adopting Release at 141.

[16] Adopting Release at 148-149. The Adopting Release notes that the foregoing guidance is consistent with the supplier engagement approach set forth in the Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2011) (the "OECD Due Diligence Guidance"), published by the Organisation for Economic Cooperation and Development (the "OECD").

including the covered countries, and the company is unable to determine whether the conflict minerals it received from such a "mixed smelter" were from the covered countries; and (ii) conflict minerals are claimed to originate from a country that has limited known reserves of the conflict mineral in question.[17] A reasonable country of origin inquiry must also take into account any warning signs or other circumstances indicating that the conflict minerals may have originated in a Covered Country or did not come from recycled or scrap sources.

B. Conclusion of Step 2: Results of Reasonably Country of Origin Inquiry

The company's next step will depend on the results of its reasonable country of origin inquiry, which may vary by product and/or mineral. There are two alternatives at this stage:

- *Alternative 1*: If (1) a company has determined on the basis of its inquiry that its conflict minerals in fact did not originate in a Covered Country or that they came from recycled or scrap sources, or (2) a company has no reason to believe that its conflict minerals originated in a Covered Country or reasonably believes that they came from recycled or scrap sources, then the company is not required to conduct a due diligence exercise as described in Section C below, and is not required to file a Conflict Minerals Report. However, the company must disclose the foregoing determination in new Form SD and also briefly describe its reasonable country of origin inquiry and the results of the inquiry. The disclosure regarding the reasonable country of origin inquiry must be provided in the body of Form SD in a section entitled "Conflict Minerals Disclosure." In addition, the company must disclose this information on its public Web site and provide a link to that Web site in the Form SD.

- *Alternative 2:* If (1) a company has determined on the basis of its reasonable country of origin inquiry that its conflict minerals did originate in a Covered Country, or if it has reason to believe they may have originated in a Covered Country, and (2) a company has determined or has reason to believe the conflict minerals are not, or may not be, from recycled or scrap sources, then the company must conduct due diligence as to the source and chain of custody of such conflict minerals, as described in Section C below.

III. Step Three: Due Diligence Requirements--Source and Chain of Custody Diligence and the Conflicts Minerals Report

The objectives of the due diligence exercise are to ascertain the origin and chain of custody of the conflict minerals and, if the conflict minerals originated in the Covered Countries, whether the minerals financed or benefited armed groups in the Covered Countries. Also, in the case of conflict minerals that the company has reason to believe may not be from recycled or scrap sources, a further objective of the due diligence exercise is to determine whether the conflict minerals are from recycled or scrap sources.

A. Due Diligence Framework

Under the final rules, a "nationally or internationally recognized due diligence framework" is a framework that is "established following due-process procedures, including the broad distribution of the framework for public comment, and is consistent with the criteria standards in the Government Auditing Standards established by the Comptroller General of the United States."[18] While the final rules do not mandate a particular framework, the SEC indicated that the "OECD Due Diligence Guidance" published by the Organisation for Economic Cooperation and Development ("*OECD*") currently satisfies its criteria and may be used as a

[17] Adopting Release at 153-54 and n.455.

[18] Item 1.01(d)(8) of Form SD.

framework for purposes of satisfying the final rules' due diligence requirement.[19] While other frameworks are currently in development, the SEC acknowledged that the OECD framework may be the only "nationally or internationally recognized due diligence framework" currently available. The OECD has also produced supplements to its due diligence guidelines related to specific minerals.[20]

The OECD Due Diligence Guidance suggests a broad, five-step framework:

1. Establish strong company management systems.
2. Identify and assess risk in the supply chain.
3. Design and implement a strategy to respond to identified risks.
4. Carry out independent third-party audit of supply chain due diligence at identified points in the supply chain.
5. Report publicly on supply chain due diligence.

If a nationally or internationally recognized due diligence framework does not exist for a necessary conflict mineral, a company must exercise appropriate due diligence in determining the source and chain of custody of the conflict mineral. If a nationally or internationally recognized due diligence framework becomes available for a necessary conflict mineral prior to June 30 of a calendar year, a company must use that framework in the subsequent calendar year.

B. Treatment of Recycled or Scrap Sources

There are special rules concerning the due diligence exercise and Conflict Minerals Reports for minerals from recycled or scrap sources. If a company knows or reasonably believes that conflict minerals come from recycled or scrap sources, no due diligence exercise is required and no Conflict Minerals Report must be filed.[21] The final rules allow companies to describe their products containing conflict minerals from recycled or scrap sources as "DRC conflict free."[22] If a company cannot reasonably conclude after its country of origin inquiry that its conflict minerals are from recycled or scrap materials, then its due diligence inquiry will focus on determining whether the minerals are from recycled or scrap sources and must utilize a nationally or internationally recognized due diligence framework for making such a determination. The SEC noted in the Adopting Release that the OECD Gold Supplement appears to be the only such framework currently existing. Where no such nationally or internationally recognized due diligence framework exists for any other particular conflict mineral from recycled or scrap sources, the company must simply describe the due diligence efforts it undertook to determine that its conflict minerals were from recycled or scrap sources and the final rules do not require an independent private sector audit regarding those conflict minerals.

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[19] Adopting Release at 206.

[20] The Tin, Tantalum and Tungsten Supplement is incorporated in the OECD Due Diligence Guidance. The Gold Supplement was adopted in July 2012 but has not yet been incorporated into the OECD Due Diligence Guidance. The Gold Supplement is available online.

[21] For purposes of the rules, conflict minerals are considered to be from recycled or scrap sources if they are from recycled metals, which are reclaimed end-user or post-consumer products, or scrap processed metals created during product manufacturing. Recycled metal includes excess, obsolete, defective and scrap metal materials that contain refined or processed metals that are appropriate to recycle in the production of tin, tantalum, tungsten, and/or gold. Minerals partially processed, unprocessed or a "bi-product" from another ore are not included in the definition of recycled metal. Item 1.01(d)(6) of Form SD.

[22] Item 1.01(d)(4) of Form SD.

C. What Is Required Following Due Diligence?

The disclosure required after completion of the required due diligence exercise depends on the results of the due diligence:

- *Conflict Minerals Did Not Originate in Covered Countries or Did Not Come from Recycled or Scrap Sources:* If, after its due diligence exercise, a company determines that conflict minerals necessary to the functionality or production of its products did not originate in a Covered Country or came from recycled or scrap sources, the company does not need to file a Conflicts Mineral Report. Like those companies who could end their inquiry after Step Two described in Section B above, these companies must disclose in Form SD their determination, must briefly describe the country of origin inquiry and due diligence exercise undertaken and the results of those efforts. These companies are also required to include this information on their public Web sites and provide a link to their Web site in the Forms SD.

- *Conflict Minerals Did Originate in Covered Countries and Did Not Come from Recycled or Scrap Sources*: If a company determines that conflict minerals necessary to the functionality or production of its products are not from recycled or scrap sources and may have originated from a Covered Country but did not finance or benefit armed groups,[23] the company must file a Conflict Minerals Report as an exhibit to Form SD. The Form SD must disclose that a Report is provided as an exhibit and provide a link to the company's Web site, where the Report must also be posted. The following must be included in the Report:

  - a description of the measures taken by the company to exercise due diligence on the source and chain of custody of the conflict minerals;

  - a statement that the company obtained an independent private sector audit of the report, which statement serves as certification of the audit as required by Section 13(p) of the Exchange Act (the statement need not be signed by an officer); and

  - with regard to any of the company's products manufactured or contracted to be manufactured that have not been found to be "DRC conflict free,"[24] a description of those products, the facilities used to process the conflict minerals in such products (which the SEC interprets to mean the smelter or refinery through which the minerals passed), the country of origin of those conflict minerals, and the efforts to determine the mine or location of origin with the greatest possible specificity; and

  - an audit report prepared by an independent private sector auditor, as well as disclosure identifying the auditor (if the report itself does not identify the auditor).

D. Transition Period: Company Cannot Determine Origin of Conflict Minerals or Whether Minerals Come from Recycled or Scrap Sources

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[23] The term "armed group" means an armed group that is identified as a perpetrator of serious human rights abuses in annual Country Reports on Human Rights Practices under sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b)) relating to the Democratic Republic of the Congo or an adjoining country. The referenced report is available at http://www.state.gov/documents/organization/186395.pdf.

[24] Products containing conflict minerals obtained from recycled or scrap sources are considered "DRC conflict free." Products that are "DRC conflict free" do not have to be described in the Conflict Minerals Report.

For calendar years 2013 and 2014 only (or calendar years 2013 - 2016 for smaller reporting companies), if a company is unable to determine whether its necessary conflict minerals originated in the Covered Countries, come from recycled or scrap sources, or directly or indirectly financed or benefited armed groups in the covered countries, it may describe products containing such conflict minerals as "DRC conflict undeterminable." The transition period relief reflects the SEC's acknowledgment that supply chain due diligence mechanisms for conflict minerals are not yet fully developed.[25] With regard to products that are "DRC conflict undeterminable," the Conflict Minerals Report must include:

- a description of the measures taken by the company to exercise due diligence on the source and chain of custody of the conflict minerals;

- a description of the products manufactured or contracted to be manufactured that are "DRC conflict undeterminable," the facilities used to process the conflict minerals in such products (if known), the country of origin of those conflict minerals (if known), and the efforts to determine the mine or location of origin with the greatest possible specificity; and

- the steps the company has taken or will take, if any, since the end of the period covered in its most recent Conflict Minerals Report to mitigate the risk that its necessary conflict minerals benefit armed groups, including any steps to improve its due diligence.

Also, a company is not required to obtain an independent private sector audit of its Conflict Minerals Report with respect to any products that are "DRC conflict undeterminable."

Beginning with calendar year 2015 (or 2017 for smaller reporting companies), a company can no longer designate products as "DRC conflict undeterminable." Instead, any products that would have been so classified must be described as not having been found to be "DRC conflict free," and the company must make the same disclosure it would be required to make if it had determined that the conflict minerals did originate in the covered countries and are not from recycled or scrap sources.

E. Type of Audit Required

The final rules require a company to obtain an independent private sector audit of the Conflict Minerals Report, conducted in accordance with standards established by the Comptroller General of the United States. The Adopting Release notes that staff of the Government Accountability Office, which is headed by the Comptroller General, has indicated that it does not intend to develop new standards for the independent private sector audit of the Conflict Minerals Report. Accordingly, existing Government Auditing Standards, such as the standards for attestation engagements or the standards for performance audits, will be applicable.[26]

The objective of the audit is to express an opinion or conclusion as to whether the design of the due diligence measures materially conforms with the criteria set forth in the nationally or internationally recognized due diligence framework used by the company, and whether the company actually performed the due diligence

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[25] Adopting Release at 187.

[26] The Government Auditing Standards for attestation engagements require that auditors be "licensed certified public accountants, persons working for a licensed certified public accounting firm or for a government auditing organization, or licensed accountants in states that have multi-class licensing systems that recognize licensed accountants other than certified public accountants." The standards for performance audits allow auditors other than certified public accountants to perform a performance audit. The auditing standard referred to is available at http://www.gao.gov/assets/590/587281.pdf.

measures described in the Conflict Minerals Report. This audit objective is less comprehensive than that used in other contexts, and should be less demanding than an audit objective to determine, for example, whether the company's due diligence measures were effective.[27]

The Adopting Release expresses the SEC's view that it not would be inconsistent with the independence requirements in Rule 2-01 of Regulation S-X if the independent public accountant that audits a company's financial statements also performs the audit of the company's Conflict Minerals Report. However, the SEC cautioned that the engagement to audit a Conflict Minerals Report would be considered a "non-audit service" subject to the pre-approval requirements of Rule 2-01(c)(7) of Regulation S-X and that the fees related to the audit of the Conflict Minerals Report would need to be included in the "All Other Fees" category of the principal accountant fee disclosures.[28]

IV. Additional Information Relating to New Form SD

All conflict minerals disclosure required under the new rules is to be provided using new Form SD (a change from the proposed rules, which would have used Form 10-K as the means to provide the disclosure). All disclosures called for by the rules are to be provided on a calendar year basis, regardless of the company's fiscal year. Form SD must be filed annually by May 31 and will cover the prior calendar year. A company must provide the required disclosure for the calendar year in which the manufacture of a product that contains any conflict minerals necessary to the functionality or production of that product is completed.[29]

The final rules require that the Conflict Minerals Report and the disclosure in the body of Form SD be "filed" and not "furnished." Therefore, a company could face liability under Section 18 of the Exchange Act for false or misleading statements in the Form SD or the Conflict Minerals Report, unless the company can establish that it acted in good faith and had no knowledge that the statement was false or misleading. However, because the conflict minerals disclosure will not be included in an annual report on Form 10-K, as originally proposed, it will not be automatically incorporated into registration statements filed under the Securities Act of 1933, nor will it be the subject of the executive officer certifications.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; John Schuster at 212.701.3323 or jschuster@cahill.com; or Lindsay Flora at 212.701.3429 or lflora@cahill.com.

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27 Adopting Release at 219.

28 *Id*. at 216.

29 If a company not subject to the rules acquires or otherwise obtains control over a company that manufactures or contracts to manufacture products with conflict minerals necessary to the functionality or production of those products, the acquiring company will be permitted to delay the reporting required by the rule until the end of the first calendar year that begins at least eight months after the effective date of the acquisition. Instruction 3 to Item 1.01 of Form SD.

SEC Flow Chart