

Client Alert

June 2013

SEC Staff Releases FAQs on Conflict Minerals Rules

On May 30, 2013, as had long been expected, the staff in the Division of Corporation Finance of the Securities and Exchange Commission released Frequently Asked Questions concerning the SEC's conflict minerals rules.¹ The FAQs do not address some of the thorniest interpretive issues under the conflict minerals rules, but they do reinforce a number of developing practices and provide helpful guidance on a number of topics for SEC reporting companies.² We summarize some of the key FAQs below.

- **Voluntary filers must file Form SD.** Every reporting company, including voluntary filers, must make the annual disclosure to the SEC on Form SD. Registered investment companies, however, are not subject to the rules. (Question 1).
- **Rules apply to reporting companies and their consolidated subsidiaries.** To clarify any statutory interpretive issues, the FAQs make clear that each reporting company must make the conflict minerals inquiry and file Form SD on a consolidated basis. (Question 3).
- **Etching a corporate logo into a generic product is not “contracting to manufacture.”** Etching or otherwise marking a logo, serial number or similar identifier on a generic product that is manufactured by a third party is not considered “contracting to manufacture.” (Question 4).
- **Containers or packaging are not considered part of the product.** This interpretation will come as great relief to the large number of manufacturers who produce products that contain no conflict minerals but are packaged in containers that do. The FAQs make clear that this conclusion is true even if a product's package or container is necessary to preserve freshness or usability. However, the FAQs also specify that a reporting company in the actual business of producing containers or packaging material must perform the conflict minerals analysis on those products. (Question 6).
- **Reporting companies that manufacture or contract to manufacture special equipment for use in providing a service are not required to report on the conflict minerals in the special equipment.** The FAQs use the example of a cruise line that contracts for the manufacture of cruise ships, but the point is equally applicable to any reporting company that contracts for the purchase of motor vehicles, aircraft or other specialty equipment used in providing a service. (Question 7).
- **Reporting companies are not required to report on the sale of used tools, machines or other equipment that contain conflict minerals.** The FAQs take the sensible position that a reporting

¹ The FAQs are available at <http://www.sec.gov/divisions/corpfin/guidance/conflictminerals-faq.htm>.

² A more detailed summary of the conflict minerals rules is available at http://www.hunton.com/files/Publication/46af05f9-c565-45e9-b02e-e5a78c680801/Presentation/PublicationAttachment/e16bef80-9230-48c2-a1f5-e95d90b8b235/Conflict_Minerals_Nuts_and_Bolts.pdf.

company selling used tools, machines or other equipment is not transforming them into its own products simply by selling them. (Question 8).

- **Form SD need not describe products by model numbers.** The FAQs continue to be somewhat circumspect on exactly what kind of product description a Form SD must include, reciting that “the rule permits an issuer to describe its products based on its own facts and circumstances.” But the FAQs do clarify that a description of products using model numbers is not required. (Question 9).
- **IPO companies may avail themselves of a transition period.** As with an acquired business, an IPO company may defer reporting on conflict minerals to the first reporting calendar year that begins no sooner than eight months after the effective date of its IPO registration statement. (Question 11).
- **Failure to timely file Form SD does not affect Form S-3 eligibility.** The staff clarified that a late Form SD filing does not affect a reporting company’s ability to use Form S-3 to offer securities. (Question 12).

Contacts

Brian L. Hager
bhager@hunton.com

Scott H. Kimpel
skimpel@hunton.com