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What Your Business Needs to Know about Conflict Minerals

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The **Dodd Frank Wall Street Reform and Consumer Protection Act** (Dodd Frank) became effective on Jan. 1, 2013. Although most of the statute addresses financial and banking regulations, there is a little-known provision called, ñSection 1502,ò relating to the use of ñconflict mineralsò by public companies.

Essentially, this section states that public companies listed with the **Securities and Exchange Commission** (SEC) are required to disclose to the SEC the use of certain minerals mined in the **Democratic Republic of Congo** and nine adjoining countries (the ñcovered countriesò).

If these so called ñconflict mineralsò are necessary to the functionality or production of a product or are used by a company in the supply chain in the manufacturing process, the company must determine whether the conflict minerals originated in any of the covered countries.

If conflict minerals are used in product manufacture or are part of a supply chain which is necessary to create the product, there must be a disclosure and annual report of such use.

The term, ñconflict minerals,ò is defined within the statute as, ñ**cassiterite, columbite-tantalite, gold, wolframite** or their derivatives, or any other minerals or their derivatives determined by the **Secretary of State** to be financing conflict in the covered countries.ò

By enacting Section 1502, Congress intended to further humanitarian goals of ending extremely violent conflict in the covered countries which violence has been partially financed by the exploitation and trade of conflict minerals. The legislative history surrounding Section 1502 reflects Congressô motivation to help end human rights abuses on the African continent.

There are exemptions to Section 1502 including an exemption if conflict minerals were produced outside the supply chain prior to the effective date of the legislation. Also, there is a de minimis exception that if the use of conflict minerals is so slight, they are not counted for purposes of the statute.

Moreover, if the company only services, maintains or repairs a product containing conflict minerals, reporting is unnecessary. This section further requires companies who assemble, but not manufacture, a product out of conflict minerals to disclose the contents of the product.

The SEC has promulgated regulations setting forth a three-step process for determining if a public company is required to disclose conflict minerals.

Because the disclosure is required to be filed with the SEC, public companies subject to filing can be held liable for fraudulent or false reporting for failure to report conflict minerals. If the reporting company is sued for making a false or misleading statement to anyone within the chain of supply who relied upon such information to purchase or sell a security, damages and attorneyôs fees may be assessed against the reporting company.

Section 1502 of the Dodd-Frank Act has good intentions, but it is believed that enforcement will be difficult and reporting burdensome to an already regulated industry. Only time will tell if this provision withstands the scrutiny of reviewing courts.

*ARD&H Managing Member **Oren Saltzman** concentrates his practice in the areas of business, commercial and corporate law, taxation, mergers & acquisitions, banking, estate planning and administration, bankruptcy and guardianship.*