

# Securities Regulation and Compliance Alert

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## SEC Staff Issues Conflict Minerals & Resource Extraction Payments Disclosure Guidance

The staff of the Division of Corporation Finance of the U.S. Securities and Exchange Commission recently issued long-awaited guidance on two of the more controversial provisions of the Dodd-Frank Act — the conflict minerals and resource extraction payments disclosure provisions. Although reporting under these rules by public companies will not begin until 2014, the new guidance will be welcomed by companies planning their compliance with these rules.

**Conflict Minerals.** Among the most important topics addressed in the guidance related to conflict minerals is whether the packaging or containers used in connection with the sale of a company's products should be considered part of the products, and whether a conflict mineral necessary to the functionality or production of the package or container also should be considered necessary to the functionality or production of the product. The SEC staff concluded that the answer to both of these questions was no, stating that "[o]nly a conflict mineral that is contained in the product would be considered 'necessary to the functionality or production' of the product" and "[t]he packaging or container sold with a product is not considered to be part of the product." The SEC staff further noted that this conclusion would be "true even if a product's package or container is necessary to preserve the usability of that product up to and following the product's purchase." Packaging or containers sold by companies independent of other products, however, would be considered a product of those companies.

The SEC staff also addressed whether companies need to cover equipment used to provide a service in their conflict minerals reporting. The conclusion here also was no, provided that 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."

Finally, the SEC staff concluded that the failure to timely file a Form SD regarding conflict minerals will not cause a company to lose its eligibility to use Form S-3.

A copy of all the frequently asked questions on conflict minerals is available [here](#).

**Resource Extraction Payments.** Among the most important topics addressed in the guidance related to resource extraction payments is the confirmation that a company that is not directly engaged in commercial development activities, but who has a subsidiary or another entity under its control that engages in those activities, would be subject to the rules. The guidance, unfortunately, does not provide any helpful gloss on what level of control an issuer would be required to have over another entity in order to trigger reporting related to that entity. That question remains subject to a facts-and-circumstances analysis. The SEC staff

also addressed a number of questions related to the information required to be disclosed about certain fees and payments to governments.

Finally, as with the conflict minerals rules, the SEC staff concluded that the failure to timely file a Form SD regarding resource extraction payments will not cause a company to lose its eligibility to use Form S-3.

A copy of all the frequently asked questions on resource extraction payments is available [here](#).