THE FRANKLIN PARTNERSHIP, LLP
YOUR KEY TO WASHINGTON

M E M O R A N D U M

To: Manufacturing Downstream Suppliers

From: The Franklin Partnership

Date: May 1, 2013

RE: Conflict Mineral Compliance Requests

Many downstream suppliers are receiving letters from customers regarding compliance with the "Conflict Minerals Rule." The following is a brief overview of the rule and some examples of information being requested of a few downstream suppliers to address their customers' compliance needs. The Franklin Partnership is not a law firm and this should not be construed as legal advice but rather a sample of approaches some suppliers are taking. Please note, the Original Equipment Manufacturers (OEMs) are still internally figuring out the best approaches to comply and we expect further guidance from them later this summer or early fall at which point we will update this document.

(If you know Tantalum, Tin, Tungsten, nor Gold are NOT included in the materials used in your production process, you may state so to your customer and likely not have to take further steps on the Conflict Mineral Rule.) A Best Practices Guidance appears at the end of this document.

The "Conflict Minerals Rule"

The Conflict Minerals Rule requires companies who fall under the Securities and Exchange Commission (SEC) to file a report on whether their manufactured goods contain Tantalum (Ta), Tin (Sn), Tungsten (W), or Gold (Au), known as the 3Ts + G, considered "conflict minerals," from the Democratic Republic of the Congo (Congo) and adjoining countries (collectively, "Covered Countries"). Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), the SEC issued a rule stating all companies under their jurisdiction (hereinafter "companies") must begin keeping track of conflict minerals in their manufactured product, including supply chain (hereinafter "suppliers"), starting January 1, 2013 with the first reports due May 31, 2014. While the final rule exempts any conflict minerals that are "outside the supply chain" prior to January 31, 2013, publicly traded companies began sending notices to their suppliers more than a year ago.

Under the final SEC rule, companies whose conflict minerals are "necessary to the functionality or production of a product manufactured or contracted by that [company] to be manufactured," must file a new Specialized Disclosure report on a new form with the SEC, Form SD and conduct a "reasonable country of origin inquiry." If the Conflict Minerals in the Company's goods are not Congo Conflict Free, or are Congo Conflict Undeterminable, the Company shall disclose in their Conflict Minerals Report the steps it has taken, or will take, to mitigate the risk that any Conflict Minerals included in its goods benefit armed groups in the Congo, including steps to improve Company's "due diligence."

The SEC modified its initial proposal and in the final rule clarified that Companies may deem conflict minerals from recycled or scrap sources as "Congo conflict free" because they no longer directly or indirectly "finance or benefited armed groups in the Covered Countries."

Status

Downstream suppliers are part of a coalition which filed a lawsuit against the SEC seeking to vacate the Conflict Minerals rule. The SEC responded to the brief on March 1, 2013 and industry filed a reply brief on March 22nd. The DC Court ruled on April 26 they do not have jurisdiction to review the case and we are now waiting on the District Court to issue a ruling.

Congressional Background

Congressional action on Conflict Minerals long precedes the provision included in the Dodd-Frank Wall Street Reform Act. For example, in 2005, then Senators Barack Obama (D-IL), Sam Brownback (R-KS), Mike DeWine (R-OH), and current Senator Dick Durbin (D-IL) introduced legislation which President George W. Bush signed into law in December 2006 (the Democratic Republic of the Congo Relief, Security, and Democracy Act of 2006, P.L. 109-456) to address the use of minerals and other mechanisms to finance ongoing conflicts in the Democratic Republic of the Congo and adjoining countries. Former Senator Brownback, now the Republican Governor of Kansas, introduced an amendment to the Dodd-Frank bill in 2010 to include the current SEC Conflict Minerals Rule requirement which became law. Congress intended to further the humanitarian goal of ending the "violent conflict in the Congo, which has been partially financed by the exploitation and trade of conflict minerals originating in the Congo."

The term "conflict mineral" is defined in Section 1502(e)(4) of the Act as (A) columbite-tantalite, also known as coltan (the metal ore from which tantalum is extracted); cassiterite (the metal ore from which tin is extracted); gold; wolframite (the metal ore from which tungsten is extracted); or their derivatives; or (B) any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country (Covered Countries include: Democratic Republic of the Congo, The Republic of the Congo, Central Africa Republic, South Sudan, Zambia, Angola, Tanzania, Burundi, Rwanda, Uganda).

Visit www.conflictfreesmelter.org for more information on the Conflict-Free Smelter program.

Compliance and Audits by the SEC Filing Company

Section 1502 of the Dodd-Frank Act added Section 13(p) to the Securities Exchange Act of 1934, instructing the SEC to issue rules requiring Companies with conflict minerals that are necessary to the functionality or production of a product manufactured by that Company to disclose annually whether any of those minerals originated in the Democratic Republic of the Congo or an adjoining country. If a Company's conflict minerals originated in those countries, Section 13(p) requires the Company to submit a report to the SEC that includes a description of the measures it took to exercise due diligence on the conflict minerals' source and chain of custody". Regardless, a Company must also report "the country of origin of the conflict minerals, if known, the facilities used to process the conflict minerals, if known, and the efforts to determine the mine or location of origin with the greatest possible specificity."

Necessary to the Production. In determining whether a conflict mineral is "necessary to the production" of a product, a Company should consider: (1) whether the conflict mineral is intentionally included in the product's production process, other than if it is included in a tool, machine, or equipment used to produce the product (such as computers or power lines); (2) whether the conflict mineral is included in the product; and (3) whether the conflict mineral is necessary to produce the product. Following industry comments, the SEC modified the rule so that, for a conflict mineral to be considered "necessary to the production" of a product, the mineral must be both contained in the product and necessary to the product's production. The SEC will not consider a conflict mineral "necessary to the production" of a product if the conflict mineral is used as a catalyst, or in a similar manner in another process, that is necessary to produce the product but is not contained in that product (tooling exemption).

Reasonable Country of Origin Inquiry. The Company must conduct reasonable country of origin inquiries for conflict minerals included in their product and must disclose the measures taken to exercise due diligence, including an independent private sector audit of the report that is conducted in accordance with standards established by the Comptroller General of the United States. (We are hearing the non-partisan Government Accountability Office may issue auditing guidelines by the end of the year, simultaneously the Organisation for Economic Co-Operation and Development (OECD) is working on international compliance standards as Europe and others adopt similar rules.) The only due diligence guidance currently approved by the SEC is the OECD's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

Audit Certification. Section 13(p) also requires the Company submitting the SEC report to identify the auditor and to certify the audit. In addition, Section 13(p) requires the report to include a description of the products manufactured or contracted to be manufactured that are not "DRC conflict free," the facilities used to process the conflict minerals, the country of origin of the conflict minerals, and the efforts to determine the mine or location of origin and post the information to their public website.

Temporary Exemption. The SEC agreed with a number of industries including suppliers who filed comments asking the SEC to modify the final rule to provide a temporary transition period for two years for all issuers and four years for smaller reporting companies who file SEC reports. During this period, Companies may describe their products as "Congo conflict undeterminable" if they are unable to determine that their minerals meet the statutory definition of "Congo conflict free."

Impact on Downstream Suppliers and Approaches Taken to Comply

The SEC believes that manufacturing Companies who contract the manufacture of certain components of their products should, for purposes of the Conflict Minerals Statutory Provision, be viewed as responsible for the conflict minerals in those products to the same extent as if they manufactured the components themselves. This is a critical interpretation by the SEC which holds the filing Company accountable for their suppliers' activities. While a downstream supplier who does not file SEC reports (typically a privately held or small business) will not submit a Conflict Minerals Specialty Disclosure form directly to the federal government, they clearly will have to provide some information to their customers who are required to file the forms on behalf of themselves and their entire supply chain.

The greatest challenge downstream suppliers will have is complying with the various requirements each of their customers who file with the SEC will impose upon them. The final SEC rule is vague in a number of areas including usage of phrases such as "due diligence", "reasonable" country of origin inquiry, nor does the SEC allow for a de minimis exception, thereby interpreting Congressional intent to mean that the use of even small amounts of conflict minerals originating in the Covered Countries triggers the reporting requirement.

Approaches Taken to Comply

Again, the challenge for a downstream supplier is each of their customers may have different compliance requirements of their supply chain. Because of vagueness in the final Conflict Minerals Rule, some of your customers may want to see at minimum that you have a compliance program in place with an employee overseeing the program. While some may interpret a supplier program as sufficient to meet their own compliance burdens and refer to such systems in place throughout their manufacturing supply chain, other customers are already requiring much more detailed information from their suppliers.

At a minimum, if your customer has already notified you that they are subject to the SEC Conflict Mineral Rule, Companies are indicating they want to know their Supplier has a system in place and someone accountable within that business to comply with the rule. Towards the other end of the spectrum, Companies are asking the Supplier to identify the mine, smelter, and item sourced. We expect additional guidance from the OEMs on supply chain compliance by late summer or early fall.

Downstream Supplier Best Practices Sample Questions and Responses

Your customers have a 3-Step compliance test and while the extent of details requested from each of your customers will vary, some questions they are asking of downstream Suppliers under Steps 1-3 include the following.

Step 1 & Step 2 Questions – Step 1 of the SEC Rule is to determine whether a conflict mineral is in the product; Step 2 of the SEC Rule is to determine whether that conflict mineral came from Congo or surrounding country. Sample questions/requests to satisfy a customer's Step 1 & 2 requirement:

- Are Tantalum, Tin, Tungsten, or Gold necessary to the functionality or production of your company's products that it manufactures? (If no for all metals, you will likely have satisfied your customer's requirements.)
- Do you have a policy and dedicated personnel in place to implement conflict-free sourcing?
- Have you conducted a "reasonable" country of origin inquiry?
- What are the due diligence steps you are taking for conflict-free sourcing?
- Have you identified all of the smelters your company and its suppliers use to supply Tantalum, Tin, Tungsten, and Gold?
- Have you identified the mines from which Tantalum, Tin, Tungsten, and Gold used in your production process originated?

Step 1 & Step 2 Responses – Some downstream suppliers report using the following responses:

Step 1 Response:

"The products produced by ABC Company from materials specified to be used by XYZ Customer are DRC Conflict Free and comply with Section 1502 of Dodd Frank, Conflict Minerals, Final Rule, August 22, 2012, II. A.3. (pp. 39-40); II. B.4.c.i.-v (pp.82-94.) Our products do not contain Tantalum, Tin, Tungsten or Gold that have been intentionally added to the product."

Step 2 Response:

"After an internal review, the ABC Company, through its due diligence, has determined that its conflict minerals included in its product are not from the Covered Countries [or] that they come from recycled or scrap sources." (be prepared to show documentation)

OR

"After an internal review, the ABC Company, through its due diligence, has determined its products manufactured or contracted to be manufactured are DRC conflict undeterminable."

- Describe the due diligence steps you took; list the facilities used to process the conflict minerals if known; country of origin if known; efforts taken to determine the location of the mine; steps you will take moving forward.

Step 3 Questions & Responses – If you answered yes to Step 1 and Step 2 and have reached Step 3 of the SEC Rule, it means your manufactured product contains necessary conflict minerals from Covered Countries that are not from recycled or scrap sources. The Company, and thus the supplier, need to conduct due diligence, and potentially provide detailed information for your customer's SEC Conflict Minerals Report. Some sample questions/requests to satisfy a customer's Step 3 requirement include:

- Include a map of your supply chain associated with those raw materials or processes.
- Provide documentation on which smelters your suppliers use in your supply chain to process the "Conflict Minerals" OR validate the origin of "Conflict Minerals" as recycled / scrap.
- Supply information on the Metal, Smelter, Facility Location, Contact Name, and Email, Product Number, Product Description (be aware your customer will make this information public).
- Please describe what steps you are taking to mitigate the risk that any Conflict Minerals included in your manufactured goods benefit armed groups in the Congo.
- If you fall under Step 3, we strongly suggest you utilize the Electronic Industry Citizenship Coalition Conflict Minerals Reporting Template which is the industry standard right now: (http://www.conflictfreesmelter.org/documents/EICCGeSIDDtemplate.xlsx)