



Footwear & Politics in Focus 2017: Conflict Minerals



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The Securities and Exchange Commission requires companies to report the use of conflict minerals

Basics of the SEC conflict minerals rule

Rule origins

- The SEC conflict minerals rule, issued in compliance with Dodd-Frank Act Section 1502, responds to concerns that groups in the Democratic Republic of Congo region were trading minerals to finance armed conflict
- The rule requires companies that use tantalum, tin, gold or tungsten to conduct a 'country of origin' study
- The rule also requires a company to disclose the results of studies on a new form to be filed with the SEC (Form SD)

The final rule applies if...

- The company files reports with the SEC under the Exchange Act
- The covered minerals are "necessary to the functionality or production" of a product manufactured or contracted to be manufactured by the company

If a company believes it uses no conflict minerals...

- The company must disclose its determination, provide a brief description of the inquiry it undertook and the results of the inquiry on Form SD

If the company has reason to believe that it uses conflict minerals...

- The company must undertake "due diligence" on the source and chain of custody of their conflict minerals and file a Conflict Minerals Report to the SEC

If a company believes that the minerals it uses may originate from the covered countries but did not benefit armed groups (DRC conflict free)

- It must obtain an independent private sector audit of its Conflict Minerals Report
- It must certify that it obtained such an audit
- It must include the audit report as part of the Conflict Minerals Report
- It must identify the auditor



Covered countries

- DRC
- Angola
- Burundi
- Central African Republic
- Republic of the Congo
- Rwanda
- South Sudan
- Tanzania
- Uganda
- Zambia

The conflict minerals rule faces challenges under new SEC administration

Takeaways from actions against the SEC conflict minerals rule



Court challenge

- In 2014, the US Court of Appeals for DC struck down a part of the conflict minerals law after the Business Roundtable, the U.S. Chamber of Commerce and the National Association of Manufacturers sued the SEC over the rule
- The court found part of it violated the free speech rights of companies by forcing them to publicly state that their products are not conflict free
- The SEC has partially stayed compliance with the rule since the court’s decision

Background

The SEC cannot permanently repeal the rule without a law passed by Congress. However, it can scale back some of the requirements or stop enforcing the rule entirely



Agency reevaluation

- Acting SEC chairman Michael Piwowar has said some companies are facing unanticipated compliance difficulties, and has directed his staff to quickly determine whether additional guidance or relief may be appropriate
- Piwowar also stated that disclosure requirements have caused a de facto boycott of minerals from a large region of Africa, which has negatively impacted legitimate mining operators
- The SEC is also allowing interested parties to submit comments on aspects of the rule and guidance until mid-March



Executive order

- Sources close to President Trump told Reuters that he is planning to issue an executive order targeting the conflict minerals rule
- The Dodd-Frank Act explicitly gives the president authority to order the SEC to temporarily suspend or revise the rule for two years if it is in the national security interest of the United States