

MEMORANDUM

April 1, 2011

To: File No. S7-40-10

From: Scott H. Kimpel
Office of Commissioner Troy A. Paredes

Re: Conflict Minerals

On April 1, 2011, Commissioner Troy A. Paredes and Scott H. Kimpel, Counsel to the Commissioner, met with Jenny McIntyre and Benedict Cohen, The Boeing Company; Fern Abrams, IPC – Association Connecting Electronics Industries; Doug Perry, Honeywell; and Frank Vargo, National Association of Manufacturers. The participants discussed the Commission's proposed rules concerning conflict minerals. Mr. Vargo distributed the attached document at the meeting.

Attachment

Conflict Minerals SEC Regulation

- The Dodd-Frank Wall Street Reform and Consumer Protection Act contains requirements for manufacturers of products containing tin, tantalum, gold, tungsten or any other “conflict minerals.” The SEC regulation to implement the requirement is to be issued on April 15, 2011.
- While the NAM supports the goal of addressing the atrocities occurring in the Democratic Republic of Congo (DRC) we are concerned that currently there are no mechanisms or systems in place in the DRC and surrounding countries to enable affected companies to meet SEC requirements. Companies will not be able to provide useful information in the early years and that is why a phased-in approach to the regulation is needed.
- John Prendergast, Co-Founder, Enough Project, testified on March 8, 2011: “In order to maintain the congressional intent of the conflict minerals provision within the Dodd-Frank Act, it is critical that a credible and sustainable regional certification system be in place. Only if mineral processing facilities, component manufacturers, and end-user companies can rely on the assurance of viable regional process will the pieces be in place for a streamlined supply-chain reporting mechanism.”
- While the new reporting mandate only applies to companies required to report to the SEC, we expect these requirements will rapidly be passed through the entire supply chain. The requirements will effectively force suppliers not subject to SEC reporting to maintain extensive records of their source materials, costing them thousands of dollars to establish and maintain these records. The NAM believes that the proposed rule is a significant rulemaking and will cost U.S. industry between \$9-16 billion to implement.
- The Act requires companies whose manufactured goods contain metals refined from the minerals columbite-tantalite (tantalum), cassiterite (tin), gold, and wolframite (tungsten) to:
 - Report annually to the SEC if the minerals “did originate” from the Congo or adjoining countries.
 - Submit a due diligence plan with the company's annual SEC report that must:
 - Provide a description of the measures taken by the company in essence to prevent sourcing of conflict minerals from the DRC;
 - Describe the products manufactured or contracted to be manufactured that are not 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
 - Have an independent third party audit of the company's due diligence plan; and,
 - Provide a certification by the company of the audit.
- The proposed rule will adversely affect American manufacturing competitiveness due to its compliance costs.
- Supply chain transparency and sourcing compliance programs take time to develop and implement. Information infrastructure to track and trace point of origin of the minerals does not yet exist.
- SEC should recognize these realities and take a practical and pragmatic approach in implementation, provide greater clarity in its regulation and a phased-in transition period.

March 28, 2011

- The NAM believes that the proposed rule is a significant rulemaking and will cost U.S. industry between \$9-16 billion to implement due to CM Reports, due diligence, changing legal obligations, new IT systems, supplier checks, audits, etc.
- Impact on Small and Medium Manufacturers
 - Many SMMs who are not subject to SEC reporting will be affected by the regulation
 - SMMs will face larger per unit cost increases because of smaller business volumes, more limited resources to produce the required documentation, and less leverage over their suppliers, both foreign and domestic
 - lack compliance staff
 - may be pushed out of the market, shrinking the supplier base
- We believe the impact and cost of the regulation necessitates
 - a phased-in approach to the disclosure requirements that become increasingly more detailed as infrastructure comes online and supply chains become more transparent
 - narrowly tailoring the requirements,
 - acknowledging the lack of infrastructure,
 - taking a practical and rational approach to the requirements,
 - differentiating issuers who “don’t know” the origin from those that do, and

Specific ideas the SEC could implement to address these problems include:

- Provide a phased-in transition. The need to create necessary tracing infrastructure to facilitate compliance with the requirements necessitates a transition. The law does not prohibit a phase-in; companies still must disclose the use of conflict minerals.
- State clearly the legal standard for compliance (i.e., that a supply chain audit approach based on risk analysis, including the use of contract provision flow-downs, is acceptable in place of a product-based or materials declaration approach).
- Create a category such as “indeterminate origin” for products manufactured or produced with conflict minerals that issuers are unable in the first years of their programs to determine origin despite best efforts, and not trigger a Report. This will minimize unwarranted harm to company brands through inaccurate content reporting requirements.
- Provide clear guidance on the scope of coverage:
 - not include minerals used in chemical processes or minerals present in machine tools and other equipment used in production
 - not include minerals that are a byproduct, or are found in trace amounts
 - adopt a *de minimis* standard so manufacturers don’t face the impossible task of tracking trace amounts of minerals
 - not treat recycled material as if it originated from the DRC or adjoining countries as it would undermine incentives to use recycled materials to reduce environmental footprint
 - not require companies that contract for the manufacture of goods by companies that themselves are obligated to report under the statute to report separately.