

**SUPPORTING STATEMENT FOR FINAL RULE UNDER THE SECURITIES
EXCHANGE ACT OF 1934 AND DODD-FRANK WALL STREET REFORM
AND CONSUMER PROTECTION ACT**

This supporting statement is part of a submission under the Paperwork Reduction Act of 1995 (“PRA”)¹

A. JUSTIFICATION

**1. CIRCUMSTANCES MAKING THE COLLECTION OF
INFORMATION NECESSARY**

In Release No. 34-67716 (“Adopting Release”),² the Securities and Exchange Commission (“Commission”) adopted new Rule 13p-1 under the Securities Exchange Act of 1934 (“Exchange Act”) and new Exchange Act Form SD to implement new Exchange Act Section 13(p).³ Section 1502 (“Conflict Minerals Statutory Provision”) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)⁴ amends the Exchange Act by adding Section 13(p), which relates to new disclosure and reporting obligations by issuers concerning “conflict minerals”⁵ that originated in the Democratic Republic of the Congo (“DRC”) or an adjoining country⁶ (together with the DRC, the “Covered Countries”). Conflict minerals are defined by the Dodd-Frank Act as columbite-tantalite, cassiterite, gold, wolframite, or their derivatives.⁷ Exchange Act Section 13(p) requires the Commission to promulgate disclosure and reporting regulations regarding the use of conflict minerals from the Covered Countries.⁸

Exchange Act Section 13(p) requires that a “person described”⁹ disclose annually whether any “conflict minerals” that are “necessary to the functionality or production of a product manufactured by such person”¹⁰ originated in the Covered Countries, and make that disclosure publicly available on the issuer’s Internet website.¹¹ If such a person’s

¹ 44 U.S.C. §3501, et seq.

² Conflict Minerals, Release No. 34-67716 (Aug. 22, 2012) [77 FR 56274].

³ 15 U.S.C. 78m(p).

⁴ Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010).

⁵ See Section 1502(e)(4) of the Dodd-Frank Act.

⁶ See Section 1502(e)(1) of the Dodd-Frank Act.

⁷ See Section 1502(e)(4) of the Dodd-Frank Act.

⁸ See Exchange Act Section 13(p)(1)(A).

⁹ See Exchange Act Section 13(p)(2).

¹⁰ Exchange Act Section 13(p)(2)(B).

¹¹ See Exchange Act Section 13(p)(1)(E).

conflict minerals originated in the Covered Countries, that person must submit a report (“Conflict Minerals Report”) to the Commission that includes a description of the measures taken by the person to exercise due diligence on the minerals’ source and chain of custody.¹²

Under Exchange Act Section 13(p), the measures taken to exercise due diligence “shall include an independent private sector audit” of the Conflict Minerals Report that is conducted according to standards established by the Comptroller General of the United States, in accordance with the promulgated rules, in consultation with the Secretary of State.¹³ The person submitting the Conflict Minerals Report must also identify the independent private sector auditor¹⁴ and certify the independent private sector audit.¹⁵ Further, according to Exchange Act Section 13(p), the Conflict Minerals Report must include “a description of the products manufactured or contracted to be manufactured that are not DRC conflict free,”¹⁶ 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 with the greatest possible specificity.”¹⁷

The final regulation contains a “collection of information” requirement within the meaning of the PRA. The Commission published a notice requesting comment on the collection of information requirements in Release No. 34-63547 (“Proposing Release”) for the proposed rules and amendments.¹⁸ The proposed rules and amendments would have amended one regulation and three forms. In response to comments received from the public, the Commission decided to adopt a new disclosure form, rather than amend existing rules and forms. The Commission has submitted the new collection of information requirement to the Office of Management and Budget (“OMB”) for review in accordance with the PRA.¹⁹

The title for the collection of information is:

- “Form SD” (a new collection of information).

¹² See Exchange Act Section 13(p)(1)(A)(i).

¹³ See *id.*

¹⁴ See Exchange Act Section 13(p)(1)(A)(ii).

¹⁵ As noted in Exchange Act Section 13(p)(1)(B), if an issuer is required to provide a Conflict Minerals Report that includes an independent private sector audit, that issuer “shall certify the audit” and that certified audit “shall constitute a critical component of due diligence in establishing the source and chain of custody of such minerals.”

¹⁶ The term “DRC conflict free” is defined in Exchange Act Section 13(p)(1)(A)(ii) and Exchange Act Section 13(p)(1)(D).

¹⁷ See Exchange Act Section 13(p)(1)(A)(ii).

¹⁸ Conflict Minerals, Release No. 34-63547 (Dec. 15, 2010) [75 FR 80948].

¹⁹ 44 U.S.C. 3507(d) and 5 CFR 1320.11.

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

The purpose of the new regulation is to implement Section 1502 of the Dodd-Frank Act that, as discussed above, added new Section 13(p) to the Exchange Act. Exchange Act Section 13(p) requires the Commission to promulgate rules requiring issuers with conflict minerals that are necessary to the functionality or production of a product manufactured by such person to disclose annually whether any of those minerals originated in the Covered Countries. New Exchange Act Rule 13p-1 and new Form SD require reporting issuers that manufacture products or contract to have products manufactured that contain conflict minerals necessary to the functionality or production of those products to conduct a reasonable inquiry into the origin of those conflict minerals. Based on this inquiry, an issuer may have to conduct a more extensive inquiry that requires the exercise of due diligence on the source and chain of custody of its conflict minerals. Depending on the results of the due diligence, the issuer may have to describe the products containing conflict minerals that have not been found to be “DRC conflict free” in a Conflict Minerals Report that is filed as an exhibit to Form SD, a new specialized disclosure form, and obtain an independent private sector audit of the Conflict Minerals Report. The information collected on Form SD may be used by interested parties to determine whether an issuer’s products contain conflict minerals and, if so, the source and chain of custody of an issuer’s conflict minerals.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

Form SD is filed electronically with the Commission using the Commission’s Electronic Data Gathering and Retrieval (“EDGAR”) system.

4. DUPLICATION OF INFORMATION

The Commission is not aware of any rules that conflict with or substantially duplicate the final regulation.

5. REDUCING THE BURDEN ON SMALL ENTITIES

The final regulation applies to all issuers that file reports with the Commission pursuant to Exchange Act Sections 13(a) or 15(d) that have conflict minerals that are necessary to the functionality or production of a product manufactured by the issuer or contracted by the issuer to be manufactured. Generally, the requirements of the final regulation do not vary based on the size of the issuer. Smaller reporting companies, however, are permitted to use the temporary “DRC conflict undeterminable” transition period, if applicable, for four years instead of the two-year transition period for all other issuers. The Commission believes that the final regulation would affect small entities with necessary conflict minerals.

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

To accomplish the goal of helping end the human rights abuses in the DRC caused by the conflict, Congress chose to use the securities laws disclosure requirements to bring greater public awareness of the source of issuers' conflict minerals and to promote the exercise of due diligence on conflict mineral supply chains. By doing so, the Commission understands Congress's main purpose to have been to attempt to inhibit the ability of armed groups in the Covered Countries to fund their activities by exploiting the trade in conflict minerals. Reducing the use of such conflict minerals is intended to help reduce funding for the armed groups contributing to the conflict and thereby put pressure on such groups to end the conflict. The Congressional object is to promote peace and security in the Covered Countries. Section 1502 amended the Exchange Act by adding new Section 13(p), which requires the Commission to promulgate disclosure and reporting regulations regarding the use of conflict minerals from the Covered Countries. The new rule and new form implement Exchange Act Section 13(p) by setting forth the conflict minerals disclosure requirements for issuers. Failure to require the collection of information would frustrate the statutory intent of Exchange Act Section 13(p) and Section 1502 of the Dodd-Frank Act.

7. SPECIAL CIRCUMSTANCES

None

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

In the Proposing Release, the Commission solicited comment on the new "collection of information" requirements and associated paperwork burdens. Additionally, to facilitate public input on rulemaking required by the Dodd-Frank Act, members of the public interested in making their views known were invited to submit comment letters in advance of the official comment period for the proposed rules.²⁰ These comments were received before the Commission published the Proposing Release. Many commentators provided comments at the pre-proposal stage, as well as after the Proposing Release was published. Additionally, some commentators provided responses to comment letters submitted by other commentators to the Commission.

Also, in response to the suggestion by some commentators that it extend the comment period to allow the public additional time to thoroughly consider the matters addressed in the Proposing Release and to submit comprehensive responses,²¹ the

²⁰ The Commission provided a series of e-mail links, organized by topic, for these letters on its website at <http://www.sec.gov/spotlight/regreformcomments.shtml>.

²¹ See, e.g., Advanced Medical Technology Association *et al.* (Dec. 16, 2010); Representative Spencer Bachus, Chairman, Committee on Financial Services, U.S. House of Representatives (Jan. 25, 2011); Department of State (Jan. 25, 2011); Jewelers Vigilance Committee *et al.* (Jan. 10, 2011); National Mining Association (Jan. 3, 2011); National Stone, Sand Gravel Association (Jan. 13, 2011); and World Gold Council (Jan. 7, 2011).

Commission extended the original comment period for an additional 30 days.²² Further, in response to suggestions from commentators,²³ the Commission held a public roundtable on October 18, 2011 at which invited participants, including investors, affected issuers, human rights organizations, and other stakeholders, discussed their views and provided input on issues related to the rulemaking.²⁴ In conjunction with the roundtable, the Commission requested further comment.²⁵ The Commission and staff also participated in an ongoing dialogue with representatives of various market participants and other government agencies through meetings and public conferences.

Although the Commission received only one comment letter that addressed the PRA explicitly,²⁶ it received a number of other comment letters and submissions that discussed the costs and burdens to issuers generally that would have an effect on the PRA analysis.²⁷ These letters are all available to the public on the SEC's website at <http://www.sec.gov/comments/s7-40-10/s74010.shtml>. The Commission considered all comment letters received prior to publication of the final regulation. A copy of the Adopting Release is attached. The Commission adopted the final regulation with modifications in response to commentators' concerns.

9. PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

²² Conflict Minerals, Release No. 34-63793 (Jan. 28, 2011) [76 FR 6110].

²³ See, e.g., letter from United States Chamber of Commerce (Feb. 28, 2011).

²⁴ See Press Release, Securities and Exchange Commission, SEC Announces Agenda and Panelists for Roundtable on Conflict Minerals (Oct. 14, 2011), available at <http://www.sec.gov/news/press/2011/2011-210.htm>.

²⁵ Roundtable on Issues Relating to Conflict Minerals, Release No. 34-65508 (Oct. 7, 2011) [76 FR 63573].

²⁶ See letter from National Association of Manufacturers (Mar. 2, 2011).

²⁷ See, e.g., letters from Assent Compliance (Dec. 19, 2011), Barrick Gold Corporation (Feb. 28, 2011), Business Roundtable (Mar. 2, 2011), Claigan Environmental Inc. (Oct. 28, 2011), Claigan Environmental Inc. (Dec. 1, 2011), Claigan Environmental Inc. (Dec. 16, 2011), Competitive Enterprise Institute (Mar. 2, 2011), Competitive Enterprise Institute (Aug. 22, 2011), Communications and Information Network Association of Japan et al. (Mar. 2, 2011), CTIA – The Wireless Association (Mar. 1, 2011), Ford Motor Company (Mar. 2, 2011), Howland Greene Consultants LLC (Jan. 28, 2011), IPC – Association Connecting Electronics Industries (Mar. 2, 2011), ITRI Ltd. (Jan. 27, 2011), ITRI Ltd. (Feb. 25, 2011), ITRI Ltd. (Oct. 19, 2011), National Association of Manufacturers (Mar. 2, 2011), National Retail Federation (Mar. 2, 2011), Personal Care Products Council (Mar. 1, 2011), Representative Christopher J. Lee (Feb. 3, 2011), Society of Corporate Secretaries and Governance Professionals (Jun. 21, 2011), TriQuint Semiconductor, Inc. (Jan. 26, 2011), Tulane University, Payson Center for International Development (Oct. 25, 2011), United States Chamber of Commerce (Feb. 28, 2011), United States Chamber of Commerce (Jul. 18, 2011), United States Chamber of Commerce (Nov. 29, 2011), and World Gold Council (Jan. 7, 2011).

10. **CONFIDENTIALITY**

Not applicable.

11. **SENSITIVE QUESTIONS**

Not applicable.

12/13. **ESTIMATES OF HOUR AND COST BURDENS**

For purposes of the PRA for the final regulation, the Commission estimates the total annual increase in the paperwork burden for all affected issuers to comply with the collection of information requirements in our final regulation is approximately 2,225,273 hours of issuer personnel time and approximately \$1,178,378,167 for the services of outside professionals. These estimates include the time and cost of collecting the information, preparing and reviewing disclosure, and submitting documents. In this regard, the Commission includes due diligence, which includes updating information technology systems and obtaining an independent private sector audit, as part of collecting information. The Commission estimates that the total cost for issuers to satisfy their due diligence is \$1,030,026,667. To derive the total estimated cost for the services of outside professionals, the Commission added this estimate to its estimate of the cost to issuers to hire outside professionals to prepare and review disclosure, submit documents, and retain records, which is \$148,351,500. The Commission estimates that approximately 5,994 issuers will be affected the regulation and will be required to provide disclosure on Form SD.

As discussed more fully in the PRA section of the attached Adopting Release, the Commission received a number of comments regarding the estimated costs of the proposed rules, particularly setting up the overall supply chain tracking systems and conducting an audit. For the PRA estimate of the due diligence costs, the Commission relied primarily on the cost estimates from a manufacturing industry association commentator and a university group commentator and, to a lesser extent, the Commission also relied on an electronic interconnect industry association commentator's estimates.

After thoroughly considering each comment letter, the Commission determined that it was appropriate to modify and/or expand upon some of the estimates and methodologies submitted by commentators to reflect data and information submitted by other commentators, as well as the Commission's own judgment and experience. The Commission's considered estimate of the total costs thus reflects these synthesized data and analyses. Therefore, its overall estimate regarding the costs of conducting due diligence, including the audit, is based on the modified cost figures.

To estimate the overall costs of conducting due diligence, including the audit, the Commission averaged the modified estimates from a manufacturing industry association commentator and a university group commentator. The average of these two costs is approximately \$1,030,026,667.

The few estimates that the Commission received from commentators regarding the number of hours it would take issuers to prepare and review the proposed disclosure requirements varied widely. The commentators included a semiconductor company, university group commentator, and manufacturing industry association commentator. In calculating the number of hours necessary to prepare and review the disclosure required by the final regulation, the Commission derived an average based on the estimates provided by a semiconductor company commentator and university group commentator.²⁸ It determined that each affected issuer, on average, would spend 495 burden hours preparing and reviewing the disclosure. The Commission assumed that 75% of the burden of preparation would have been carried by the issuer internally (approximately 371.25 hours per issuer) and that 25% of the burden of the preparation (approximately 123.75 hours per issuer) would have been carried by outside professionals retained by the issuer at an average cost of \$200 per hour.²⁹ The portion of the burden carried by outside professionals would have been reflected as a cost, while the portion of the burden carried by the issuer internally would have been reflected in hours. Therefore, the total number of internal preparation hours for affected issuers would be 2,225,273 hours. Similarly, the total cost for external preparation for affected issuers would be \$148,351,500.

The following table illustrates the estimated changes in annual compliance burden in the collection of information in hours and costs for the new Exchange Act specialized disclosure report that will result from the final regulation. The burden hours figure is the 2,225,273 internal burden hours estimate for preparing the disclosure. The Commission is adding the \$148,351,500 estimate of external professional costs for preparing the disclosure to the \$1,030,026,667 estimate of conducting due diligence, including the audit, to determine the \$1,178,378,167 professional costs in the below table.

²⁸ The Commission did not include the two-hour figure from a manufacturing industry association commentator in its estimate because it was so much lower than the other two estimates and did not appear to include all the necessary steps to comply with the proposed rules. Instead, this estimate was based only on the time required to make changes to an issuer's corporate compliance policies and supply chain operating procedures. Also, a university group commentator specifically disagreed with this estimate and the manufacturing industry association commentator acknowledged that these actions may take "considerably more than two hours."

²⁹ A university group commentator estimated that outside professionals would cost \$200 per hour because it believed that "a substantial portion" of required consulting work will be done by "lower cost environmental and sustainability consulting firms" instead of large accounting firms that would be more expensive. The Commission frequently uses a \$400 per hour estimate in our PRA analysis on the assumption that attorneys will be involved in the preparation of the securities law disclosures required by its rules. The disclosure required by the final regulation may likely involve work by other types of professionals, so that the \$200 per hour estimate may be more appropriate in this circumstance.

Form	Current Annual Responses	Final Annual Responses	Current Burden Hours (A)	Increase in Burden Hours (B)	Final Burden Hours (C)=(A)+(B)	Current Professional Costs (D)	Increase in Professional Costs (E)	Final Professional Costs (F)=(D)+(E)
SD	5,994	2,225,273	2,225,273	\$1,178,378,167	\$1,178,378,167

14. COSTS TO FEDERAL GOVERNMENT

The Commission estimates that the cost of preparing the final regulation and new form will be approximately \$150,000.

15. REASON FOR CHANGE IN BURDEN

Not applicable.

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

Not applicable.

17. APPROVAL TO OMIT OMB EXPIRATION DATE

We request authorization to omit the expiration date on the electronic version of this form for design and scheduling reasons. The OMB control number will be displayed.

18. EXCEPTIONS TO CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS

Not applicable.

B. STATISTICAL METHODS

Not applicable.