

Conflict Mineral Due Diligence in the Automotive Industry

August 2011

Enacted in July 2010, §1502 of the Dodd-Frank Act authorized the Securities and Exchange Commission (SEC) to implement rules requiring publicly-traded companies to disclose their use of “Conflict Minerals” originating from the Democratic Republic of Congo (DRC) or any country that shares a border with the DRC. Conflict Minerals consist of cassiterite, columbite-tantalite, gold, wolframite or their derivatives. The objective of §1502 is to reduce trading in Conflict Minerals from the DRC and surrounding region, which helped finance the continuing violence in the DRC.

The SEC issued proposed rules implementing the §1502 disclosure requirements in December 2010, and it is expected that final rules will be released later this month. The SEC’s final rules will likely require that, beginning in 2010, public companies conduct due diligence, audit their supply base and file annual reports with the SEC on the use of Conflict Minerals in their products. As such, public companies will need to conduct due diligence of their entire supply chain in order to delineate the origin of any Conflict Minerals.

In addition, non-public companies may not be immune from the reach of §1502. Public companies will likely require their suppliers, regardless of whether the supplier is subject to SEC oversight, to provide information on the supplier’s use and procurement of Conflict Minerals. In the automotive industry, OEMs have already begun discussions with their suppliers on how to address these due diligence concerns.

Because Conflict Minerals are found throughout many vehicles, the due diligence and reporting requirements imposed by the SEC on the automotive supply chain is expected to be significant. In determining and certifying whether their parts contain Conflict Minerals, suppliers might even need to investigate which smelters are used in their components and the origin of scrap materials integrated into their components’ raw materials.

Work on coordinating many of these efforts is beginning within the automotive supply chain, such as the efforts being undertaken by the AIAG. Miller Canfield attorneys will participate in these efforts as well as be available to advise clients. In addition, to best prepare for the forthcoming final rules, public and non-public companies in the automotive industry should begin to take the following steps:

- Determine which of their products contain Conflict Minerals.
- Outline each product’s supply chain.
- Communicate, cooperate, and verify with their suppliers the origin of Conflict Minerals.