SHEARMAN & STERLING LLP

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SEC Adopts Dodd-Frank Conflict Minerals and Government Payments Rules

On August 22, 2012, the Securities and Exchange Commission adopted rules implementing Sections 1502 and 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The rules implementing Section 1502 of the Dodd-Frank Act relate to reporting requirements regarding conflict minerals originating in the Democratic Republic of the Congo and adjoining countries. The rules implementing Section 1504 of the Dodd-Frank Act relate to reporting requirements regarding certain payments made by oil and gas and mining issuers to foreign governments and the US Federal Government.

New Reporting Requirements for Manufacturing Issuers and Resource Extraction Issuers

On August 22, 2012, the Securities and Exchange Commission (the "SEC") adopted rules implementing Sections 1502 and 1504 of the Dodd-Frank Act.

The rules implementing Section 1502 of the Dodd-Frank Act (the "Conflict Minerals Rules") relate to reporting requirements regarding conflict minerals originating in the Democratic Republic of the Congo (the "DRC") and adjoining countries (together, the "Covered Countries"). The new rules impose additional disclosure obligations on issuers that use "conflict minerals" in their products. Affected issuers are required to comply with the Conflict Minerals Rules beginning with the year ended December 31, 2013 by filing their conflict minerals disclosure and, if required, conflict minerals report on new Form SD by May 31, 2014. The Conflict Minerals Rules are discussed in Part I of this Memorandum.

The rules implementing Section 1504 of the Dodd-Frank Act (the "Government Payments Rules") relate to reporting requirements regarding certain payments made by oil and gas and mining issuers to foreign governments and the US Federal Government. Affected issuers are required to comply with the Government Payments Rules beginning with the fiscal year ending after September 30, 2013, by filing the required disclosures on Form SD no later than 150 days after the end of the fiscal year. The Government Payments Rules are discussed in Part II of this Memorandum.

Both the Conflict Minerals Rules and the Government Payments Rules apply to issuers that file reports under Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including companies that file annual reports with the SEC on Form 10-K, Form 20-F or Form 40-F.

The Dodd-Frank Act enacted a third specialized disclosure provision affecting SEC reporting issuers, Section 1503, which relates to specific reporting requirements regarding mine safety at mines in the United States operated by such issuers. The SEC adopted rules implementing Section 1503 of the Dodd-Frank Act on December 21, 2011. Shearman & Sterling LLP published a client memorandum discussing the mine safety reporting rules, which can be found here.

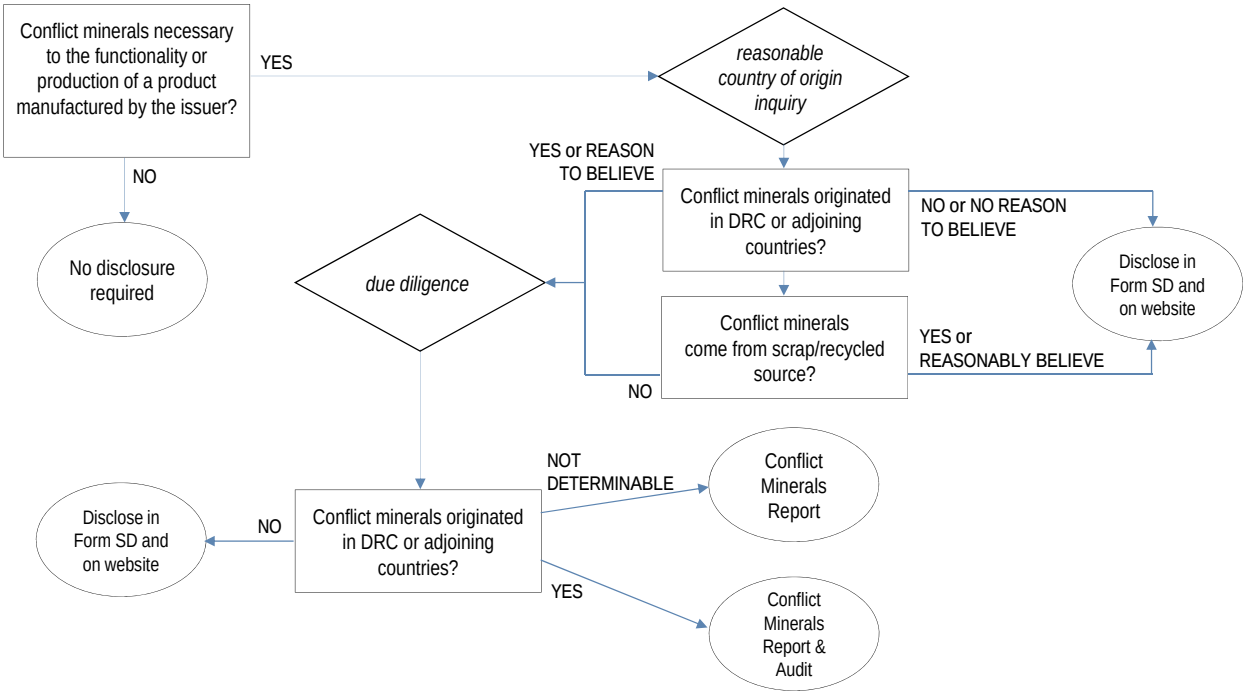
The Dodd-Frank Act, which came into force on July 21, 2010, enacted comprehensive reforms concerning regulation of the financial industry in response to the financial crisis. However, the Dodd-Frank Act also includes several provisions, including Sections 1502 through 1504, bearing little relevance to financial reform, which are tacked on to the end of the legislation under the heading "Miscellaneous Provisions". With Sections 1502 through 1504, Congress is utilizing the US disclosure laws and the SEC's rulemaking authority for policy ends having little to do with the SEC's mandate of protecting investors and promoting efficient markets.

PART I

Conflict Minerals

The Conflict Minerals Rules reflect the SEC's consideration of the extensive input received from a broad base of interested stakeholders in response to the proposed rule issued by the SEC on December 15, 2010 (the "Proposed Rules"). While the Conflict Minerals Rules adopt the framework proposed in the Proposed Rules, the SEC modified certain key provisions in the Proposed Rules to address concerns raised in the stakeholder consultation process.

The disclosure an issuer is required to make under the Conflict Minerals Rules is determined by a three-step analysis:



1. Each issuer must first determine whether it is subject to the Conflict Minerals Rules. The Conflict Minerals Rules apply if conflict minerals are necessary to the functionality or production of products manufactured or contracted to be manufactured by an issuer. Issuers whose products do not contain conflict minerals are not subject to the Conflict Minerals Rules and are not required to make any conflict minerals disclosures.

2. If an issuer uses conflict minerals in its products, it must undertake a reasonable country of origin inquiry to determine whether the conflict minerals it uses originated in the Covered Countries or from recycled or scrap sources. If the issuer (i) determines that its conflict minerals did not originate in the Covered Countries or has no reason to believe that such minerals may have originated in the Covered Countries or (ii) determines, or reasonably believes, that its conflict minerals originated from recycled or scrap sources, it only needs to disclose that determination and describe the inquiry it used in reaching that determination.

3. Finally, if an issuer determines that its conflict minerals did originate, or has reason to believe that such minerals may have originated, in the Covered Countries and are not from recycled or scrap sources, it is required to conduct further due diligence on the source and chain of custody of its conflict minerals. Depending on the findings of the due diligence, the issuer may be required to file a conflict minerals report ("Conflict Minerals Report") containing certain additional disclosures and an independent private sector audit.

We discuss this analysis and the specific disclosure requirements in detail below.

Step One — Scope of the Conflict Minerals Rules

A company is subject to the Conflict Minerals Rules if:

1. it files reports with the SEC under Section 13(a) or Section 15(d) of the Exchange Act, and
2. conflict minerals are necessary to the functionality or production of a product manufactured or contracted to be manufactured by the company.

The Conflict Minerals Rules apply to all Exchange Act reporting issuers, including companies that file annual reports with the SEC on Form 10-K, Form 20-F or Form 40-F. We examine below the key terms and concepts involved in this step of the analysis.

Definition of Conflict Minerals

The term "conflict minerals" is defined as:

- columbite-tantalite (coltan)
- cassiterite
- gold
- wolframite
- or their derivatives

The Conflict Minerals Rules clarify that the rules apply only to gold and the principal derivative of each of the other three conflict minerals, known as the "3 Ts":

- tantalum (derivative of columbite-tantalite)
- tin (derivative of cassiterite)
- tungsten (derivative of wolframite)

Additional minerals or derivatives may be added to the definition of "conflict minerals" in the future, if the Secretary of State determines that such minerals or derivatives are financing conflict in the Covered Countries.

Manufacture or Contract to Manufacture; Applicability to Mining Issuers

The Conflict Minerals Rules apply to products "manufactured or contracted to be manufactured" by an issuer if those products use conflict minerals. The rules do not define the terms "manufactured" and "contracted to be manufactured". As such, these terms are to be interpreted as they are commonly understood and in light of the issuer's particular facts and circumstances.

Generally, an issuer manufactures or contracts to manufacture a product if the issuer has control or influence over the manufacturing process. An issuer that only services, maintains or repairs a product would not be considered to "manufacture" that product. Likewise, an issuer that sells generic products under its own brand name or a separate brand name that it has established, but does not have any influence over the manufacturing specifications of those products, would not be considered to manufacture or contract to manufacture those products and would therefore not be subject to conflict minerals disclosure with respect to those products. An issuer that contracts the manufacture of components used in the issuer's products is subject to the Conflict Minerals Rules if those components contain conflict minerals.

There was much debate during the notice and comment rulemaking process on the question of whether mining companies whose operations are limited to mining conflict minerals and selling unfinished minerals on to a smelter – or refinery, in the case of gold – for upgrading and processing "manufacture" "products" and thus come within the scope of the Conflict Minerals Rules. In contrast to the Proposed Rules, under the Conflict Minerals Rules such mining issuers are not subject to conflict minerals reporting.

Necessary to Functionality or Production; No *De Minimis* Exemption

The Conflict Minerals Rules apply if conflict minerals are "necessary to the functionality or production" of products manufactured or contracted to be manufactured by an issuer. While these terms are not defined in the rules, the SEC provides some guidance in the final rule release regarding its position with respect to how the "necessary" standard delineates the scope of the Conflict Minerals Rules.

If conflict minerals are *intentionally* used in the production of a product, they will be deemed to be necessary and the Conflict Minerals Rules will apply, regardless of the amount of the conflict minerals involved. That is, where conflict minerals are used intentionally, there is no *de minimis* exemption for products that contain only trace amounts of conflict minerals. However, in a departure from the Proposed Rules, a product is subject to conflict minerals disclosure only if the final product actually contains conflict minerals. For example, where a conflict mineral is used as a catalyst in the production of a product, but the final product does not contain any of the conflict mineral, the product would not be subject to conflict minerals disclosure.

If a product has multiple generally expected functions, uses or purposes (for example, a smart phone that can be used to make and receive phone calls, access the internet and listen to stored music), the Conflict Minerals Rules apply if conflict minerals are necessary to any of these functions. The Conflict Minerals Rules would not be triggered if conflict minerals are only used in tools or capital equipment used in the production of an issuer's products, such as computers or power lines.

The question of whether conflict minerals are necessary to the functionality or production of a product may be academic in most instances. As a practical matter, if an issuer's products contain conflict minerals, or if conflict minerals are used in the production of an issuer's products (other than in tools or capital equipment), it would be prudent to establish controls to diligence the source of those conflict minerals, as further described in the following section.

Step Two — Reasonable Country of Origin Inquiry

If an issuer determines that it is subject to the Conflict Minerals Rules because conflict minerals are necessary to the functionality or production of a product manufactured or contracted to be manufactured by the issuer, the issuer is required to make a reasonable country of origin inquiry to determine whether the conflict minerals in its products originated in the Covered Countries or from recycled or scrap sources. If the issuer (i) determines that its conflict minerals did not originate in the Covered Countries or has no reason to believe that such minerals may have originated in the Covered Countries or (ii) determines, or reasonably believes, that its conflict minerals originated from recycled or scrap sources, it must disclose that determination and describe the inquiry it used in reaching that determination.

Reasonable Country of Origin Inquiry Standard

The initial standard of inquiry required to be undertaken to determine whether an issuer's conflict minerals originated in the Covered Countries is a "reasonable country of origin inquiry". The Conflict Minerals Rules do not specify what constitutes a reasonable country of origin inquiry. However, the SEC provides some helpful guidance in the final rule release. While the nature and extent of the inquiry will necessarily depend on an issuer's particular facts and circumstances, the inquiry must be reasonably designed to determine whether the issuer's conflict minerals did originate in the Covered Countries, or did come from recycled or scrap sources, and it must be performed in good faith. A

reasonableness standard means that absolute certainty is not expected. In addition, the level of inquiry is not expected to be as exhaustive as the due diligence standard required in connection with preparing a Conflict Minerals Report (see Step Three below). Finally, the SEC recognizes that what is reasonable will depend on the infrastructure and processes in place throughout the conflict minerals supply chain to enable issuers to trace the source of the conflict minerals they use.

The critical "choke point" in the conflict minerals supply chain is the smelter (or refinery, in the case of gold) at which the minerals are processed. As such, the SEC considers an issuer to satisfy the reasonable country of origin inquiry standard if it obtains reasonably reliable representations indicating the smelter or refinery that processed that issuer's conflict minerals and demonstrating that those conflict minerals did not originate in the Covered Countries or came from recycled or scrap sources. The issuer would have reason to believe representations are reliable if a processing facility received a certification under recognized international standards that the smelter or refinery processes only "DRC conflict free" minerals. The Electronic Industry Citizenship Coalition (EICC) and the Global e-Sustainability Initiative (GeSI) have developed a conflict-free smelter assessment program (the "EICC-GeSI CFS Program") to identify compliant smelters based on an independent third-party evaluation. The EICC-GeSI CFS Program has been designed specifically to aid issuers in complying with the Conflict Minerals Rules and in ensuring the sourcing of conflict minerals from responsible smelters and refineries.

As part of their internal controls for conflict minerals compliance, issuers may wish to consider including "flow-down" clauses in their contracts with suppliers, requiring their suppliers to purchase conflict minerals from verified smelters or refiners and in turn requiring their suppliers to obtain similar assurances from suppliers further up the chain.

If an issuer, based on its reasonable country of origin inquiry, has no reason to believe that its conflict minerals originated in the Covered Countries or knows or reasonably believes that its conflict minerals came from recycled or scrap sources, it does not have to exercise due diligence on its conflict minerals supply chain as required under Step Three. However, an issuer cannot ignore red flags. For example, if an issuer determines based on representations from its suppliers that its conflict minerals were processed by a facility that processes minerals from a number of different sources including the Covered Countries, and the issuer is unable to determine whether the particular minerals it received from such a "mixed smelter" were from the Covered Countries, the issuer would have reason to believe that its conflict minerals may have originated in the Covered Countries and would be required to exercise due diligence on the source and chain of custody of those minerals.

Recycled and Scrap Minerals; Minerals Already in the Supply Chain

The Conflict Minerals Rules recognize that, as a practical matter, it is tremendously difficult, if not in many cases impossible, to trace the ultimate origin of recycled and scrap conflict minerals and minerals that are already in the supply chain at the time the Conflict Minerals Rules came into force. If an issuer, based on its initial reasonable inquiry, determines or reasonably believes that conflict minerals used in its products were obtained from recycled or scrap sources, it must disclose this determination in its Form SD, as well as a description of the inquiry that led to this determination. This reflects a change in approach from the Proposed Rules, in which the SEC had proposed to require a Conflict Minerals Report for recycled and scrap conflict minerals but to presume that such minerals are "DRC conflict free".

The Conflict Minerals Rules provide an exemption for conflict minerals that are outside the supply chain prior to January 31, 2013. This means that the conflict minerals disclosure only applies to conflict minerals that are smelted, or fully refined in the case of gold, after January 31, 2013. In addition, minerals that have not been smelted or fully refined but are stockpiled outside the Covered Countries prior to January 31, 2013 are also exempted.

Location of Disclosure; Liability

If, based on its reasonable country of origin inquiry, the issuer (i) determines that its conflict minerals did not originate in the Covered Countries or has no reason to believe that such minerals may have originated in the Covered Countries or (ii) determines, or reasonably believes, that its conflict minerals originated from recycled or scrap sources, it must disclose that determination, as well as a description of the inquiry undertaken. The disclosure is required to be made in Form SD, a new Exchange Act form for the specialized disclosures required under the Conflict Minerals Rules and the Government Payments Rules (*see* Part II of this Memorandum).

The conflict minerals reporting for all issuers is based on the calendar year, not an issuer's fiscal year, and the deadline for filing Form SD is May 31 following the end of the calendar year to which the disclosures relate. The Conflict Minerals Rules provide a transition period for acquisitions of businesses that manufacture or contract to manufacture products that are subject to conflict minerals disclosure. An issuer that has acquired such a business may delay the initial conflict minerals reporting period until the first calendar year beginning no sooner than eight months after the acquisition.

The conflict minerals disclosure must also be published on the issuer's company website and remain available for one year. As part of the issuer's conflict minerals disclosure in its Form SD, the issuer is also required to state that the disclosure is available on its website and provide the address of the website. The disclosure must remain on the company's website for one year.

The Form SD, including the Conflict Minerals Report, if required, is treated as "filed" for purposes of Section 18 of the Exchange Act, meaning that it is subject to liability for misleading statements. (This is a significant change from the Proposed Rules, which would only have required the conflict minerals disclosures to be "furnished".) However, the disclosures in Form SD are not covered by the CEO and CFO certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act, and will not be deemed to be automatically incorporated by reference into any filing under the Securities Act of 1933 (such as registration statements) or any filing under the Exchange Act, except to the extent that the issuer specifically incorporates it by reference. As such, the independent private sector audit report would not trigger the requirement to file an expert consent, unless the issuer specifically incorporates it by reference into a registration statement.

Step Three — Due Diligence and Conflict Minerals Report

If an issuer, based on its reasonable country of origin inquiry, determines that its conflict minerals did originate, or has reason to believe that such minerals may have originated, in the Covered Countries and are not from recycled or scrap sources, it is required to undertake further due diligence on the source and chain of custody of its conflict minerals. The issuer's reporting obligations under the Conflict Minerals Rules depend on the findings of the due diligence inquiry:

- If the issuer determines that its conflict minerals did not originate in the Covered Countries or that its conflict minerals came from recycled or scrap sources, it must disclose this conclusion and describe the due diligence efforts it exercised. However, it is not required to prepare and file a Conflict Minerals Report.
- If the issuer is unable to determine the source of its conflict minerals, the issuer's products containing those conflict minerals would be classified as "DRC conflict undeterminable". A Conflict Minerals Report is required to be filed with respect to such conflict minerals, but, during a two-year transition period (four years for smaller reporting companies), an independent audit is not required.
- If the issuer determines that its conflict minerals did originate in the Covered Countries, it is required to file a Conflict Minerals Report, which must be audited by an independent private sector audit firm.

Due Diligence Standard

The due diligence inquiry undertaken by an issuer on the source and chain of custody of its conflict minerals must follow a nationally or internationally recognized due diligence framework. The release references in particular the due diligence guidelines developed by the Organisation for Economic Co-operation and Development ("OECD").[1]

Content of Conflict Minerals Report

If an issuer is required to prepare a Conflict Minerals Report, the report must be filed as an exhibit to the issuer's Form SD and must include the following:

- a description of the measures taken as part of the issuer's due diligence
- if an independent audit is required, a certification by the issuer (which need not be signed) that it has obtained an independent private sector audit of the Conflict Minerals Report
- if the issuer determines that any of its products are not "DRC conflict free":
  - a description of such products
  - the facilities used to process the conflict minerals used in such products (i.e., the smelter or refinery that processed the minerals)
  - the country of origin of those conflict minerals
  - the efforts to determine the mine or location of origin with the greatest possible specificity
- if required, the audit report of the independent private sector auditor, which identifies the entity that conducted the audit

A product is "DRC conflict free" if it does not contain conflict minerals that directly or indirectly finance or benefit armed groups in the Covered Countries. If an issuer describes any of its products as "DRC conflict undeterminable", as permitted during the initial two-year transition period, it must disclose the steps it has taken or will take, since the end of the period covered by its most recent Conflict Minerals Report to mitigate the risk that its conflict minerals benefit armed groups, including any steps to improve its due diligence.

[1] See OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas at http://www.oecd.org/daf/internationalinvestment/corporateresponsibility/mining.htm (accessed on August 26, 2012).

PART II

Disclosure of Payments by Resource Extraction Issuers

The Government Payments Rules largely adopt the framework proposed in the proposed rules issued by the SEC on December 15, 2010 (the "Proposed Rules"). However, in the final version of the Government Payments Rules, the SEC, after taking into consideration the extensive input received during the comment process, in certain cases either deviated from the Proposed Rules or opted not to define certain terms in the Proposed Rules.

Who is Subject to the Government Payments Rules

The Government Payments Rules apply to "resource extraction issuers", which includes any US and foreign company that is engaged in the commercial development of oil, natural gas or minerals and that is required to file annual reports with the SEC, regardless of the size of the company, the extent of business operations that constitute commercial development of oil, natural gas or minerals or whether the company is government-owned.

Some commenters had urged the SEC to permit resource extraction issuers to satisfy the disclosure requirements by providing the disclosure pursuant to a disclosure regime that the issuer is otherwise subject to, such as domestic laws, listing rules or the Extractive Industries Transparency Initiative (the "EITI"). However, the Government Payments Rules do not permit this. The SEC also did not adopt any exemption for situations where disclosure is prohibited by foreign law or subject to contractual confidentiality provisions.

Payments by "a Subsidiary...or an Entity Under the Control of..."

The Government Payments Rules require a resource extraction issuer to provide disclosure of payments made by the issuer, a subsidiary of the issuer, or an entity under the control of the issuer to a foreign government or the US Federal Government for the purpose of the commercial development of oil, natural gas, or minerals.

"Control" and "subsidiary" are terms already defined in Rule 12b-2 under the Exchange Act. A resource extraction issuer must disclose payments made by a subsidiary or entity under the control of the resource extraction issuer where the subsidiary or entity is consolidated in the resource extraction issuer's financial statements included in its Exchange Act reports, as well as payments by other entities it controls as determined in accordance with Rule 12b-2.

Definition of "Commercial Development of Oil, Natural Gas, or Minerals"

The Government Payments Rules define "commercial development of oil, natural gas, or minerals" to include the activities of exploration, extraction, processing and export, or the acquisition of a license for any such activity. This includes both the production of oil and natural gas as well as the extraction of minerals.

The term "commercial development" is intended to capture only activities that are directly related to the commercial development of oil, natural gas or minerals, excluding any ancillary or preparatory activities. For example, the manufacturing of a product used in the commercial development of oil, natural gas or minerals would not fall within the scope of "commercial development".

"Processing" includes, among other activities, the processing of gas to extract liquid hydrocarbons, the removal of impurities from natural gas after extraction and prior to its transport through the pipeline, the upgrading of bitumen and heavy oil, and the crushing and processing of raw ore, but excludes smelting and refining.

The term "export" includes the export of oil, natural gas or minerals from the host country but not the removal or transportation of the resource to the refinery or first marketable location. Thus, a company that engages solely in the exportation of oil, natural gas or minerals falls within the scope of the Government Payments Rules, while a company

that is engaged simply in the transportation of the resource is not subject to the rules. For example, under the Government Payments Rules, transporting a resource to a refinery or to an underground storage prior to exportation is not considered "commercial development", and, therefore, an issuer would not be required to disclose payments related to those activities.

In order to avoid circumvention of the disclosure requirements, the SEC added an anti-evasion provision to the Government Payments Rules. This provision requires disclosure with respect to an activity or payment that, although not in the form or characterization of one of the categories specified in the rules, is part of a scheme or plan to evade the required disclosure.

Object of Disclosure: Definition of Payment

Definition of Payment

The SEC largely adopted the list of the types of payments that are subject to disclosure as proposed in the Proposed Rules, but made certain additions and clarifications to the list of payment types.

Under the Government Payments Rules, the term "payment" includes the following types of payments:

- taxes;
- royalties;
- fees;
- production entitlements;
- bonuses;
- dividends; and
- payments for infrastructure improvements.

These payments are subject to disclosure to the extent that they are part of the commonly recognized revenue stream for the commercial development of oil, natural gas or minerals.

In order to align the Government Payments Rules with the EITI framework, two additional categories of payments to the list of payments that are required to be disclosed: dividends (other than dividends paid on the same terms as to other non-government shareholders) and payments for infrastructure improvements (e.g., building a road or railway).

The Government Payments Rules require a resource extraction issuer to disclose fees, such as license fees, bonuses paid in furtherance of the commercial development of oil, natural gas or minerals and taxes.

However, resource extraction issuers are not obliged to disclose social payments, such as payments to build a hospital or school, as these types of payments are not part of the commonly recognized revenue stream.

Payments in kind are subject to the disclosure requirements and should be reported at cost, or if cost is not determinable, fair market value. With respect to in-kind payments, the issuer must provide a brief description of how the monetary value was calculated.

As discussed above, in order to address the potential for circumvention of the disclosure requirements, the Government Payments Rules include an anti-evasion provision. The goal of this provision is to highlight the substance of a payment over its form or potential characterization by the issuer.

The "not *de minimis*" Requirement

The Government Payment Rules define payments that are "not *de minimis*", and, therefore, subject to disclosure, as any single payment or series of related payments, that equals or exceeds $100,000 during the most recent fiscal year. In the case of an arrangement providing for periodic payments or installments (such as rental fees), a resource extraction issuer must consider the aggregate amount of related periodic payments or installments of related payments in determining whether the $100,000 threshold has been met for that series of payments and, accordingly, whether disclosure is required.

The Requirement to Provide Disclosure for "Each Project"

The Government Payments Rules require a resource extraction issuer to disclose information regarding the type and total amount of payments made to a foreign government or the US Federal Government for each project relating to the commercial development of oil, natural gas or minerals. However, the rules do not define the term "project". The SEC opted to leave the term "project" undefined, in order to provide issuers with flexibility in applying the term to different business contexts depending on factors such as the particular industry in which the issuer operates or the issuer's size.

Definition of "Foreign Government"

A "foreign government" includes a foreign national government as well as a foreign subnational government, such as the government of a state, province, county, district or municipality under a foreign national government. However, with respect to payments made to US governmental entities, only payments made at the level of the US Federal Government, and not State or local governments, are required to be disclosed.

Disclosure Required and Form of Disclosure

Annual Report Requirement

Section 13(q) of the Exchange Act provides that a resource extraction issuer shall disclose the required information in an annual report, without specifying the location of the disclosure, either in terms of a specific form or in terms of location within a specific form. As proposed in the Proposed Rules, a resource extraction issuer would have been required to provide the payments disclosure in exhibits to its Exchange Act annual report filed on Form 10-K, Form 20-F or Form 40-F.

In a departure from the Proposed Rules, the Government Payments Rules require the disclosure to be provided in new Form SD, separate from the issuer's existing Exchange Act annual report. The SEC intended that disclosure in a specialized form will facilitate the ability of interested parties to locate the disclosures, as well as address issuers' concerns about providing the disclosure in their Exchange Act annual reports on Forms 10-K, 20-F or 40-F.

Form SD requires issuers to include a brief statement in the body of the form, in an item entitled "Disclosure of Payments By Resource Extraction Issuers", directing investors to the detailed payments information to be provided in exhibits to the form.

The government payments reporting is based on each issuer's fiscal year. The SEC intended that this should help to minimize compliance costs, to the extent that resource extraction issuers are able to use part of the tracking and reporting systems that issuers already have established for their public reports to track and report payments under the Government Payments Rules.

The Government Payments Rules require resource extraction issuers to file Form SD no later than 150 days after the end of the issuer's most recent fiscal year.

Exhibits and Interactive Data Format Requirements

Under the Government Payments Rules, a resource extraction issuer must submit the payments information in only one exhibit formatted in XBRL, instead of two exhibits as proposed in the Proposed Rules, using electronic tags that identify, for any payment required to be disclosed:

- the total amounts of the payments, by category;
- the currency used to make the payments;
- the financial period in which the payments were made;
- the business segment of the issuer that made the payments;
- the government that received the payments and the country in which the government is located; and
- the project of the resource extraction issuer to which the payments relate.

In addition, a resource extraction issuer must provide the type and total amount of payments made aggregated for each project as well as the type and aggregated total amount of payments made to each government in interactive data format. In providing total amounts, issuers may report the amounts in either US dollars or the issuer's reporting currency.

The Government Payments Rules do not require the payments information to be audited or provided on an accrual basis.

Treatment for Purposes of Securities Act and Exchange Act

The Form SD, including the interactive data exhibit, is treated as "filed" for purposes of Section 18 of the Exchange Act, meaning that it is subject to liability for misleading statements. (This is a significant change from the Proposed Rules, which would only have required the government payments disclosures to be "furnished".) However, the disclosures in Form SD are not covered by the CEO and CFO certifications required by Section 302 of the Sarbanes-Oxley Act and will not be deemed to be automatically incorporated by reference into any filing under the Securities Act of 1933 (such as registration statements) or any filing under the Exchange Act, except to the extent that the issuer specifically incorporates it by reference.

Effective Date

Under the Government Payments Rules, a resource extraction issuer will be required to comply with new Rule 13q-1 under the Exchange Act and Form SD for fiscal years ending after September 30, 2013.

The Government Payments Rules provide that for the first report filed for fiscal years ending after September 30, 2013, a resource extraction issuer may provide a partial year report if the issuer's fiscal year began before September 30, 2013. The issuer will be required to provide a report for the period beginning October 1, 2013 through the end of its fiscal year. For any fiscal year beginning on or after September 30, 2013, a resource extraction issuer will be required to file a report disclosing payments for the full fiscal year.

* * *

The Conflict Minerals Rules and the Government Payments Rules will likely impose substantial additional costs for many issuers to implement the disclosure controls and procedures necessary to comply with the new disclosure obligations. Shearman & Sterling LLP will be working closely with our clients to assist them in complying with the new rules.

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

If you wish to receive more information on the topics covered in this publication, you may contact your regular Shearman & Sterling contact person or any of the following:

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