

**2011 DODD-FRANK ACT COMPLIANCE CHECKLIST FOR RESOURCE  
EXTRACTION ISSUERS AND “CONFLICT MINERAL” MANUFACTURERS**

**RESOURCE EXTRACTION ISSUERS**

- Determine whether your company is a “resource extraction issuer” subject to disclosure rules under Section 1504 of the Dodd Frank Act. [see Appendix 1 for a definition of “resource extraction issuer”]
- If so, appoint a person responsible for gathering information on the type and total amount of “payments” for projects relating to the commercial development of oil, natural gas or minerals. Hire outside consultants as needed. [see Appendix 1 for “payments” definition]
- Prepare for 2012 changes to your company’s website and SEC annual filings so that they include the required disclosures. The required information that should be furnished with your annual report should be in two exhibits: one in either HTML or ASCII format and the other in XBRL format with the appropriate electronic tags that identify: (1) total amount of payments by project; (2) currency payments made in; (3) financial period in which payments were made; (4) business segment making the payments; (6) government and country that received the payments; and (7) project to which the payments relate.
- Develop and implement an effective FCPA compliance program. [see Appendix 2]

**CONFLICT MINERAL MANUFACTURERS**

- Determine whether you are a “manufacturer” subject to conflict materials disclosure requirements under Section 1502 of the Dodd-Frank Act. [see Appendix 1]
- If so, appoint a point person/entity responsible for gathering information about your logistics/supply chain to ascertain where the conflict materials originated from, the chain of custody, whether the conflict minerals were obtained from the Democratic Republic of the Congo (“DRC”) or an adjoining country, and whether they can be considered “recycled or scrap” materials. Maintain all due diligence efforts undertaken to determine the sourcing and chain of custody of any conflict minerals. If required, hire an independent auditor to prepare a Conflict Minerals Report.
- Update your website and SEC annual filings to accommodate the required disclosures.
- Develop and implement an effective FCPA compliance program. [see Appendix 2]

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**APPENDIX 1: DEFINITIONS**

**Conflict minerals** include cassiterite, columbite-tantalite, gold, wolframite or their derivatives (including tin and tungsten).

**Manufacturer** under Section 1502 of the Dodd-Frank Act is defined to mean public companies with registration requirements with the U.S. Securities and Exchange Commission (“SEC”) that manufacture products, or contract to have products manufactured, for which conflict minerals are necessary to the functionality or production. Under the proposed rules, a company that contracts to manufacture a product would include those companies that have any influence over the product’s manufacturing, or if the company contracts specifically to have the product manufactured regardless of influence over the manufacturing process. Examples would include mining companies that produce conflict minerals, or a company that sells under its brands a generic product containing conflict minerals, even if the product is manufactured by another company. These proposed rules, if adopted, would not apply to shippers, trading companies, or resellers.

**Payments** under Section 1504 of the Dodd-Frank Act are defined as payments made to further the commercial development of oil, natural gas or minerals that are not *de minimus* and are a part of the commonly recognized revenue stream for the commercial development of oil, natural gas or minerals. Under the proposed rules, such payments would also include those made in cash or in kind and include taxes, royalties, fees (including licensing fees), production entitlements, bonuses or other material benefits that the SEC determines, consistent with EITI guidelines, are part of the commercial development of oil, natural gas or minerals.

**Resource Extraction Issuer** is any company required to file an annual report with the SEC that engages in an activity that is “directly related” to the commercial development of oil, natural gas, or minerals. The proposed rules state the following would be considered activities that are “directly related” to the commercial development of oil, natural gas or minerals: exploration, extraction, processing, export and other significant actions (like procuring a license for any of the above-referenced activities).

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**APPENDIX 2: 7 ELEMENTS OF AN EFFECTIVE FCPA COMPLIANCE PROGRAM**

1. Set The Tone From The Top: Have senior management or the board of directors endorse an official written FCPA policy. The policy should include sufficient incentives for compliance, establish and nurture a strong culture of compliance within the organization and include strong anti-retaliation protections for whistleblowers.
2. Appoint A Chief Compliance Officer: Appoint a member of senior management to oversee the FCPA program on a daily basis. Divide responsibility among various managers and other corporate executives and have approval procedures in place for activities that could give rise to FCPA liabilities. This person should have sufficient resources to implement the program, access to the board of directors and senior management and the ability to make periodic reports to the board on the overall effectiveness of the program.
3. Maintain Appropriate Documents: Maintain appropriate documentation (e.g., due diligence reviews and background checks, contracts, invoices/payment documentation, foreign government official travel, entertainment and hospitality payment documentation, petty cash disbursements) in a centrally accessible location for at least five years.
4. Train Your Staff on FCPA Compliance Issues: Communicate the company’s FCPA policy to all employees, directors and managers, strategic business partners, and others, as needed. Training should be tailored to specific job functions or area/division of responsibility and based on the particular risk profile for the transaction. Use specific examples relevant to those being trained of situations to be wary of.
5. Dealing With Agents, Business Parties, Subcontractors And Other Third Parties: Screen any third party who will be working directly with foreign officials on the company’s behalf. Share the company’s FCPA policy liberally and require certifications of compliance where necessary. Retain audit and termination rights where needed and include FCPA representations and warranties in contracts.
6. Disciplinary Process/Reporting Mechanisms: Include whistleblower protections and widely disseminate information on how one can report suspected violations. Include blind reporting mechanisms (e.g., hotlines or anonymous surveys) whenever possible. Make sure discipline for FCPA violations is timely, appropriate, well-documented and consistently applied.
7. Remediation/Monitoring of Program: When violations do occur, prompt action should be taken to remedy the issue and remedial steps taken to ensure no future reoccurrence. A company should continually monitor its FCPA program, including periodic outside audits, and make changes, as appropriate, given changes to the business and its personnel. Regular reports to the board of directors or audit committee is encouraged.