Auditing Aspects of Conflict Minerals Rule

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On August 22, the Securities and Exchange Commission adopted its long-awaited rule on Conflict Minerals Disclosure. The rule was mandated by the Dodd-Frank Act to respond to human rights violations by armed groups in the Democratic Republic of Congo (DRC), who are financing their activities through trade in certain "conflict minerals" originating in that country. It requires new public disclosures with the Securities and Exchange Commission by companies for which conflict minerals are necessary to the functionality or production of products they manufacture or contract to manufacture. Such companies must conduct a reasonable inquiry to determine the minerals' country of origin. If, based on that inquiry, the company knows or have reason to believe the minerals originated in the DRC or an adjacent country, the company must perform due diligence to determine whether or not the minerals finance or benefit the activities of armed groups identified as perpetrators of human rights abuses. The required due diligence measures include an independent private sector audit of the conflict minerals report, performed in accordance with U.S. government auditing standards. The auditor must meet the qualification and independence standards prescribed in government standards.

A conflicts mineral audit differs from, and will not be part of, a company's financial statement audit. The SEC does confirm in its release that a reporting company can retain the same firm that audits its financial statements to perform the conflict minerals audit, without violating the SEC's auditor independence rules. However, the audit of the conflict minerals report would be considered a "non-audit service" subject to the SEC's audit committee pre-approval requirements. In addition, the fees related to the audit would need to be included in the "All Other Fees" category of the reporting company's principal accountant fee disclosures in its proxy statement.