

Unearthing Exotic Provisions Buried in Dodd-Frank

By BEN PROTESS

Johan Spanner for The New York TimesThe Dodd-Frank Act requires companies to disclose their use of minerals from Congo or neighboring countries.

At a meeting in February to discuss the recent overhaul of financial regulations, lobbyists and policy makers never once mentioned Wall Street. They did not talk about derivatives, mortgage-backed securities or any of the exotic products at the center of the crisis.

Instead, Mary L. Schapiro, the head of the Securities and Exchange Commission, hurled questions at representatives of Apple and Hewlett-Packard about war-torn central Africa, an odd topic for a financial regulator. She wanted to know more about the American companies that buy coveted minerals extracted from the region.

After months of writing dozens of rules on arcane financial instruments, Ms. Schapiro told attendees the discussion was “certainly an interesting change of pace,” according to two people with knowledge of the meeting who spoke on condition of anonymity because the discussions were private.

While the issue may be outside the S.E.C.’s core expertise, it is now within its jurisdiction. A little-known amendment tacked onto the Dodd-Frank financial reform law requires corporations to disclose whether they manufacture products using so-called **conflict minerals from Congo** or neighboring countries.

Lawmakers are worried about metals like tantalum, tin and gold, which they believe have financed armed rebels throughout the region during a roughly 15-year conflict punctuated by incidents of mass slaughter and rape. Many American companies use these metals to build cellphones, computers and cameras.

The conflict minerals amendment is one of several unusual elements buried in Dodd-Frank, which spans some 2,300 pages and touches nearly every corner of Wall Street. One section is dedicated to derivatives. Another chunk covers lavish Wall Street bonuses.

Then there are the “miscellaneous provisions” Congress tucked into Dodd-Frank last summer — a catchall for some lawmakers’ pet concerns, among them mining safety and spending by the International Monetary Fund.

One provision requires companies to disclose payments made to foreign governments for the right to extract oil and natural gas. The proposal had an influential backer: the co-author of the financial overhaul package, Representative Barney Frank, Democrat of Massachusetts, who introduced similar legislation in 2008.

“The provisions are appropriately called miscellaneous,” said Andrew J. Foley, a partner at the law firm Paul, Weiss, Rifkind, Wharton & Garrison, which represents oil, natural gas and mining companies that are subject to the rules. “There’s no question it’s unrelated to the financial crisis.”

Given the ongoing partisan stalemate, Dodd-Frank presented a rare opportunity for Republicans and Democrats. In the aftermath of the economic crisis, the act was the closest thing to a sure bet in Washington. Lawmakers “jumped on to the passing bandwagon,” Mr. Foley said, using the moment to insert popular, if sometimes random, rules.

Mr. McDermott, who served as a Foreign Service medical officer in central Africa during the 1980s, returned to Congo four years ago to tour a hospital that was treating people wounded in the continuing civil war. After visiting with a group of rape victims, he said he was shocked by the human rights abuses. Mr. McDermott traced much of the suffering to rebel soldiers who sold tantalum and other minerals to finance their war.

The issue gained traction in 2008 after Sam Brownback, then a Republican senator from Kansas, introduced legislation requiring companies to disclose their use of conflict minerals. A few years before, Mr. Brownback, now the governor of Kansas, had traveled to the Congo with Senator Richard Durbin, Democrat of Illinois. But the effort soon stalled.

“Of course, it never moved anywhere — and along comes the Dodd-Frank bill,” said Mr. McDermott. After a short debate on the Senate floor, the plan to regulate conflict minerals was attached to the sweeping new law by Mr. Brownback.

“You get bills passed any way you can,” Mr. McDermott said.

Almost immediately, companies took aim at the regulation. They figured it would be a costly proposition to trace the roots of such minerals.

In February, the United States Chamber of Commerce called on the S.E.C. to withdraw its plan to enforce the regulation. “The proposed rule, if implemented, would create a disclosure regime that is burdensome and difficult, if not impossible to comply with, resulting in potentially erroneous disclosure,” lobbyists for the group said in a letter to the commission.

Tiffany & Company, one of the world’s largest jewelry companies, pushed the agency to exempt gold from the disclosure requirements, arguing in a separate letter that the proposed rules “would violate the First Amendment.”

Many other companies were caught totally off guard by the rule. In recent months, lawyers and auditors say they have had to explain the rule to clients who were unaware of its existence.

“Some weren’t aware of the provision and most didn’t realize its complexity,” said Douglas K. Dean, a partner in the sustainable business solutions practice at PricewaterhouseCoopers.

The S.E.C. did not fully grasp the intricacies of the provision either. As with other Dodd-Frank rules, the agency has missed important deadlines for both the conflict minerals provision and the one about payments to foreign governments. While the S.E.C. proposed rules to enforce the disclosure requirements, it was supposed to complete the regulations about three months ago. The agency said it needed additional time to study the thorny topics.

“The new payment disclosure rule is a powerful tool, but we are still waiting for the law to be enforced,” said Ian Gary, a senior policy analyst at Oxfam America, an advocacy group.

Mr. Dean of PricewaterhouseCoopers said his clients were anxiously awaiting the S.E.C.’s final conflict minerals rule, hoping it would finally clarify the issue. They also want to know whether the agency will issue exemptions for businesses that use only trace amounts of the minerals or get them from recycled sources, he added.

“Companies,” he said, “are basically in a holding pattern.”