

Top six questions directors should ask about conflict minerals

Conflict minerals can be found in thousands of products produced in nearly every industry. In the US alone, it's estimated that the rule could affect close to 6,000 companies – and have an indirect impact on at least 275,000 others – regardless of size or extent of mineral use. For the Canadian market, this conservative estimate includes up to 600 companies directly, and 30,000 companies indirectly. So what are conflict minerals? They're tin, tungsten, tantalum and gold (referred to as 3TG) mined in conditions of armed conflict and human rights abuses in the Democratic Republic of the Congo (DRC) and its adjoining countries (covered countries¹). In order to address this issue, the US Securities and Exchange Commission (SEC) has outlined new disclosure requirements for their registrants that use these minerals. Have your board and management considered and addressed the risks related to conflict mineral reporting? Below are questions you should be asking now in order to be prepared for this new rule.

The broad reach of conflict minerals

Why compliance to this rule should be on your agenda

1. Conflict minerals

How will the new rule impact the company I oversee?

SEC registrants will have to conduct some level of due diligence over their supply chain and conduct independent assurance of this framework. SEC registrants that identify conflict minerals in their supply chain will have to file a report that includes a description of the measures they've taken to exercise due diligence. The SEC estimates that 75% of all affected registrants will need to file this report.

2. Reporting

What's the timeline for reporting and where should my organization be now in our reporting process?

Affected SEC registrants must make their first conflict minerals disclosures before May 31, 2014, for their calendar 2013 operations. But many organizations are falling behind being able to meet the deadline. Our recent survey of more than 900 companies found that less than half are in the initial stages of their efforts. Another 16% have not even started to obtain information while 32% are still determining how and if the new rule applies to their company. We recommend that at a minimum, you're determining if the rule applies to your company and you should be aiming to have your findings ready to be audited by January, 2014.

¹ Africa Republic, South Sudan, Zambia, Angola, The Republic of Congo, Tanzania, Burundi, Rwanda, Uganda.



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3. Risk

What risks are associated with non-compliance?

The objective of the new rule is to stem ongoing violence and human rights abuses. Companies can expect that active human rights organizations will publicly highlight brands that aren't aware of the conflict status of the materials in their products, or that haven't taken steps to eliminate conflict minerals from their supply chain. The impact could range from mild negative publicity, to comprehensive product boycotts, particularly for businesses that serve retail consumers. Shareholder activists may also look to protect their investments by forcing conflict status higher up on companies' priority lists. Additionally, if companies are found in violation of the SEC rule, they'll be subject to corresponding penalties. Be sure your fellow board members and management are aware of these risks and how they may apply to your company.

4. Governance

Who in my organization is responsible for reporting to the SEC?

Legal and compliance personnel, along with purchasing and supply chain departments, are leading the compliance efforts. Our recent report found that slightly more than 10% cited board involvement. However, 25% stated that they weren't sure who was responsible for conducting due diligence, possibly indicating a lack of internal organization. Ultimately, the submission to the SEC must be signed by an executive officer, like the CEO or CFO, on behalf of the organization.

5. Due diligence

What's considered acceptable due diligence?

The conflict minerals rule isn't the only initiative that aims to promote responsible sourcing and supply chain due diligence. Members of the World Gold Council, Responsible Jewellery Council (RJC), the Dubai Multi Commodities Centre (DMCC), the Electronic Citizenship Coalition (EICC) and the London Bullion Market Association (LBMA) have introduced guidance and standards that require their members to conduct due diligence and submit independently audited reports to their governing bodies as well. If your company is a member of these associations and you have undertaken the required due diligence, you're already a step ahead of what's required under the new SEC rule. These due diligence processes are all based on the OECD's *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (OECD Due Diligence Guidelines) and accepted by the SEC.

At a minimum, affected SEC issuers will need to develop and document due diligence procedures. The rule states that due diligence processes must follow a nationally or internationally recognized framework. Currently, the OECD Due Diligence Guidelines is the only recognized framework that satisfies this criteria.

6. Supply chain opportunities

How do companies benefit?

The conflict minerals rule is not the first supply chain-related regulatory requirement companies have faced—and it likely won't be the last. Some see the new rule as an opportunity to strengthen their supply chain and brand. As part of the reporting exercise, companies can use the data they collect to review their supplier relationships and sourcing strategies.

In addition, the added transparency introduced by the new rule presents an opportunity to market your brand differently. Companies that are able to demonstrate their products are 'conflict free' have the potential to create new customer relationships.