

Deadline Looms For SEC's Conflict Minerals Rule

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With reporting requirements for the SEC's Dodd-Frank mandated Conflict Minerals Rule coming due on May 31, 2014, public companies are scrambling to determine their next steps in providing disclosures and transparency required under the new rule, according to PwC's [Conflict minerals survey: How companies are preparing](#) [1]. The survey found that almost half of the nearly 900 executives surveyed are still in the initial stages of their compliance efforts, while 16 percent have not yet begun gathering information, and 32 percent are still determining if the rule even applies to them.

"There's no time to waste. This can be an incredibly complex process and with the deadline fast approaching, companies will need to interpret the rule as best they can, and in a timely manner," said Bobby Kipp, partner in PwC's [Risk Assurance](#) [2] practice, and the firm's conflict minerals leader. "According to our survey, the most significant challenges that companies will face include identifying relevant suppliers, obtaining accurate and relevant information from them and establishing an entity-wide conflict minerals philosophy. Companies should take these potential challenges into account when assessing their compliance timeline and project plan, and designing their conflict minerals approach."

Of the companies that have at least started gathering information on their conflict minerals status, 72 percent are in the industrial products & manufacturing, technology and automotive industries. These industries have made the most progress in completing the reasonable country of origin inquiry (RCOI), partly due to their engagement with trade associations that are actively involved in the conflict minerals process.

PwC managing director Greg Szczesny recently talked with IMPO, to explain what the new rule means to the industry, how manufacturers can best prepare, and where to find help. The "rule is complex," he says, and companies should be creating plans, talking to suppliers, and indentifying where they need help.

Q: What is the SEC's Dodd-Frank mandated Conflict Minerals Rule?

In August 2012, the SEC approved its final rule on conflict minerals. The rule, mandated by the Dodd-Frank Act, requires public companies to disclose whether they use conflict minerals (tantalum, tin, tungsten, and gold) and whether the minerals originated in the Democratic Republic of the Congo (DRC) or adjoining countries (collectively, the "covered countries"). It addresses concerns that conflict minerals mined in covered countries help finance armed groups that are responsible for violence in those countries. The disclosures are intended to promote the strengthening of custody controls surrounding conflict minerals and thereby reduce funding for the armed groups.

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Conflict minerals can be found in thousands of products ranging from cell phones and laptop computers to jewelry, golf clubs, drill bits, and hearing aids. Due to this widespread use, an estimated 6,000 companies that are SEC issuers will have to provide new disclosures under the rule. An estimated 275,000 private companies that are part of the issuers' supply chains are also affected. The SEC estimates compliance costs at \$3-4 billion initially and \$200-600 million annually thereafter.

Companies must first comply with the disclosure requirements on or before May 31, 2014 for the 2013 calendar year. An issuer that is unable to determine whether or not its conflict minerals are conflict-free is allowed a temporary two-year period (four years for smaller companies) to describe its minerals as "DRC conflict undeterminable." During that temporary period, however, the issuer is still required to perform due diligence and file an unaudited Conflict Minerals Report (CMR) with additional disclosures, including steps taken to improve due diligence and mitigate the risk that its conflict minerals benefit armed groups.

Q: For those in the industrial products/manufacturing and auto industries now facing the Conflict Minerals Rule, how can they best determine if the ruling applies to them - and prepare for it?

There are a number of questions companies must consider to determine whether they have products that may be within the scope of the rule. Many of these questions deal with terminology used in the rule, but the terms are often not clearly defined. These questions include (but are not limited to):

- What is or is not part of our products? (Note that a recently-issued FAQ on the rule issued by the SEC staff indicated that packaging is typically not considered part of the product).
- Are our products "entered into the stream of commerce?"
- Do we "manufacture" or "contract to manufacture" products?
- Do our products contain conflict minerals?
- Are the conflict minerals "essential to the functionality" or "essential to the production" of the product?

Answering these and other similar questions are the first steps companies need to take to determine whether they may need to comply with the rule.

PwC recently released the results of a survey we performed related to conflict minerals compliance efforts, which showed some interesting results:

- Almost ½ of companies still in the early stages of their compliance efforts (including 32 percent that are still determining how the rule applies to them)
- Only 2 percent have completed their inquiry into the origin of their conflict minerals and started their due diligence measures
- Furthest along are industrial products/manufacturing, technology, auto - they also have active industry associations, which can help.

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Q: Is there help available for companies now grappling with this ruling?

Companies can find help from a number of sources, from industry associations and groups to professional service providers. These sources may provide insights and interpretations of the SEC rules, implementing the Organisation for Economic Co-operation and Development (OECD) framework and practical considerations for designing and rolling-out this new compliance requirement. PwC currently provides consulting and auditing services to clients across many sectors to include: automotive, industrial products, pharmaceutical/medical device, technology and telecommunications, retail and consumer, and aerospace and defense. PwC provides Conflict Minerals compliance support from full conflict minerals program design, development and implementation to assistance in conducting pre-audit program assessments reviewing existing compliance programs for adherence to SEC and OECD guidelines.

Q: What are the most significant challenges these companies face, and how can they best address them?

Our [survey](#) [3] addresses this question (p. 23):

- The biggest challenge is getting accurate and complete info from suppliers, and on a related note, identifying relevant suppliers. Establishing a company philosophy and scaling information technology also ranked as major challenges for survey respondents.
- There are a number of additional challenges outlined in the graphic, and it will take time to address them adequately, so companies should get started.
- Some companies are realizing that, by looking at their supply chain in this in-depth way, they can find opportunities to rationalize their supply chain or improve sourcing arrangements. In some cases, these side-benefits represent a bit of a silver lining for companies looking to get the most out of their efforts.

Key Messages:

- Rule is complex – we are already in the first compliance year and need to get started.
- Not something that the SEC reporting group in the company can do alone – need legal, compliance, product engineering, supply chain, audit, IT, sustainability help
 - Also technology alone cannot get you into compliance
- What to do now:
 - Engage your team—especially your supplier relationship managers – and ID the executive officer who will sign the SEC filings
 - Create a plan
 - Identify products and suppliers – start talking to suppliers

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- Document the decisions you have already made
- Identify where you need help

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Links:

[1] <http://www.pwc.com/us/en/audit-assurance-services/publications/conflict-minerals-preparedness-survey.jhtml>

[2] <http://www.pwc.com/us/en/risk-assurance-services/third-party-assurance.jhtml>

[3] http://www.pwc.com/en_US/us/audit-assurance-services/publications/assets/pwc-conflict-minerals-preparedness-survey.pdf