

Preparing for Conflict Minerals Rule Compliance: Company Action Items Checklist

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This Checklist suggests action items for companies preparing to comply with the diligence and disclosure requirements of the conflict minerals rule. It is a companion resource to Practice Note, Conflict Minerals Diligence, ([0-510-6930](#)) which includes a detailed discussion of the diligence and disclosure requirements of the conflict minerals rule, and a review of leading resources to assist companies in complying with those requirements.

Rule 13p-1 under the Exchange Act and Form SD (referred to together as the conflict minerals rule) require a significant portion of SEC reporting companies to make specialized disclosure and conduct related diligence about certain minerals and derivative metals contained in the companies' products. Since the requirements of the conflict minerals rule are triggered by the use of minerals that are widely used in many industries, they affect a wide range of companies. In addition, while non-reporting companies are not directly subject to the conflict minerals rule, they are likely to be indirectly affected if they are part of the supply chain of a reporting company. For more information on what companies are covered by the conflict mineral rule, see Practice Note, Conflict Minerals Diligence: Covered Companies and Effective Date ([0-510-6930](#)).

This Checklist suggests some of the steps that companies should consider taking as they prepare to comply with the conflict minerals rule. The Checklist focuses on the initial steps of the compliance process. As a result, it does not list every step companies take to comply with the requirements of the conflict minerals rule or to establish a framework that conforms to the Organisation for Economic Co-operation and Development due diligence framework (OECD guidance). For a detailed discussion of the diligence and disclosure requirements of the conflict minerals rule and OECD guidance, see Practice Note, Conflict Minerals

Diligence ([0-510-6930](#)). This Checklist should be read together with that Practice Note.

ASSEMBLE A COMPLIANCE TEAM

- Create an internal conflict minerals rule compliance team. For most companies, the internal team should consist, at a minimum, of representatives from procurement, legal, manufacturing, engineering, IT, finance and internal audit. Representatives from corporate social responsibility and investor relations also should be included if the company has these functions in-house.
- Determine which senior personnel will oversee the compliance program.
- Empower the compliance team leader. Compliance with the conflict minerals rule requires significant cooperation across locations, divisions and departments. Senior management should:
 - empower the compliance team leader with the authority to develop and implement the compliance program; and
 - create the appropriate incentives to ensure internal cooperation.
- Designate a point person for conflict minerals rule questions. This may be the conflict minerals rule compliance team leader or, in a larger organization, it may be someone who reports to the team leader. Designating a point person will:
 - increase the likelihood that important questions about the conflict minerals rule will be asked; and
 - help ensure that the rule is applied consistently throughout the organization and that certification requests, questionnaires and contract terms are dealt with consistently.
- Consider whether the company needs to hire additional personnel to manage conflict minerals rule compliance.
- Consider whether the internal compliance team needs to be supplemented by specialist outside legal counsel to assist in, among other things:
 - developing and documenting the compliance program;
 - educating personnel on the requirements of the conflict minerals rule and the OECD guidance;
 - advising on interpretive questions and gray areas under the rule;
 - advising on compliance policies and procedures;

- advising on incoming materials from and outgoing material being sent to suppliers and customers; and
- preparing conflict minerals rule disclosure.
- Consider whether other outside consultants are needed to assist in:
 - determining which of the company's products fall within the rule's scope;
 - vendor outreach; and
 - reviewing vendor responses.

GET UP TO SPEED

- Become familiar with the OECD guidance, which is currently the only recognized framework for step three due diligence under the conflict minerals rule (for a discussion of this, see Practice Note, Conflict Minerals Diligence: Diligence Step 3: Detailed Due Diligence and Reporting on Supply Chain ([0-510-6930](#))).
- Become familiar with other relevant non-governmental organization recommendations and industry initiatives. Many companies piggyback on industry-wide initiatives to reduce compliance costs (for more information on some of these initiatives, see Practice Note, Conflict Minerals Diligence: Diligence Resources and Initiatives ([0-510-6930](#))).

ASSESS THE COMPLIANCE PROJECT

- Determine which company products may be implicated by the conflict minerals rule. This is often a cumbersome task because many companies do not have a centralized product database or database of materials content. Some companies have circulated internal questionnaires or held internal meetings to gather this information.
- Catalogue the company's current procurement policies and practices, diligence practices, and internal reporting and data gathering practices and capabilities relating to conflict minerals rule compliance to determine if any enhancements are needed.
- Construct a work plan, timeline and budget for the compliance program.
- Consider conducting a pilot compliance program if time permits. Particularly for companies with a complex supply chain, this will be a means to identify weaknesses and areas for improvement that can be remedied before the company rolls out its conflict minerals compliance program more broadly.
- Demo third-party conflict minerals rule compliance software solutions. Many companies will need to use third-party software solutions to collect and analyze data for conflict minerals rule compliance. There are several solutions competing in this market.
- If the company plans to outsource some portions of its compliance effort, meet with consultants. This continues to be a developing area of expertise, and consultants in the market have a wide range of service offerings and price points. Because of this, companies will want to meet with several consultants before hiring one.
- Consider whether supplier, product or other information gathered as part of the company's compliance program can enhance internal efficiency or save money. If so, the program design should take these goals into account.

COMMUNICATE THE RULE AND THE COMPANY'S COMPLIANCE PROGRAM INTERNALLY

- Update the company's compliance manuals and policies to reflect the conflict minerals rule and the company's related sourcing policies. Many companies have separate conflict minerals policies, while others include the substance in their social responsibility, supply chain or equivalent policy.
- Send relevant employees written information on:
 - the conflict minerals rule;
 - the company's compliance obligations under the rule; and
 - the company's sourcing policies.
- Conduct internal training sessions on the conflict minerals rule, company policies and the compliance program for relevant personnel. A written summary will likely not be enough to give most personnel a good understanding of these topics.
- Implement procedures that will ensure all third-party requests for conflict minerals-related information, certifications and contract amendments are vetted by a knowledgeable employee. Requests, certifications and amendments may be overly broad, impossible for the company to comply with or require specialized knowledge. Personnel not familiar with the conflict minerals rule might not recognize this.

MANAGE SUPPLIERS

- Assemble a database of the individuals at the company's suppliers who should receive conflict minerals rule compliance materials. For the compliance program to efficiently meet its goals, it is critical that materials reach supplier compliance personnel. These may be different individuals than the company's regular contacts, who typically are on the sales side of the organization.
- Send an initial written communication to suppliers sensitizing them to the conflict minerals rule, the company's compliance obligations and its conflict minerals policy.
- Consider whether the company should conduct information sessions for its suppliers on the conflict minerals rule, what the company expects from its suppliers relating to compliance with the rule or how suppliers should respond to requests from the company for information.
- Determine the company's supplier outreach strategy. This should include determining, among other things:
 - which suppliers to contact;
 - who will contact these suppliers;
 - when to make contact;
 - what materials to use; and
 - how to follow up with suppliers that do not respond or submit incomplete responses.
- Adapt the company's systems to collect, store and assess conflict minerals compliance information, including responses from suppliers to information requests. Many companies choose to use outside vendors to collect, store and assess information.
- Put in place a document retention policy for the maintenance of records relating to the compliance program.

- Make appropriate amendments to contracts and purchase orders with suppliers and supplier codes of conduct to incorporate:
 - a requirement for the supplier to adhere to the company's conflict minerals policy;
 - supplier disclosure and cooperation obligations; and
 - flow-down clauses (clauses requiring a direct supplier to, in turn, require its sub-suppliers to abide by the same requirements that the company is requiring of the direct supplier).
- Establish compliance measures for new suppliers.
- Develop a risk management strategy that includes procedures for additional outreach and suspending or terminating suppliers that do not comply with the company's sourcing policies, and alternative sources for products and conflict minerals.
- Consider participating in industry conflict minerals traceability initiatives.
- Confirm that the company's conflict minerals policy and any compliance strategy the company has articulated are consistent with the company's other corporate social responsibility disclosures.
- Review competitors' publicly available conflict minerals policies and other related disclosures.
- Determine whether the company's compliance efforts can be used to the company's competitive advantage.

NEAR-TERM DISCLOSURE CONSIDERATIONS

- Post the company's conflict minerals sourcing policy on the company website.
- Determine whether external stakeholders are focused on the company's conflict minerals sourcing policies and compliance program. If so, determine what information, in addition to what is required by the rule, should be furnished to meet these stakeholders' expectations. Also determine how this information should be furnished (for example, as part of the company's Form SD or supplementally).

OTHER CONSIDERATIONS

- Participate in industry working groups. These groups are a good source of information on how peer companies are addressing interpretive questions under the conflict minerals rule.
- Consider the investor relations and shareholder implications of the company's conflict minerals sourcing policies and practices. Expect to receive questions from some institutional investors. Some investors may more actively seek to drive conflict-free sourcing through shareholder proposals and voting policies. Conflict free sourcing is likely to become an increased focus of some institutional investors.
- When pursuing acquisitions, take the conflict minerals rule into account in due diligence and assessing risk.
- Be sensitive to emerging requirements and the impact that they may have on compliance. Other jurisdictions have proposed or are expected to propose conflict minerals legislation. In addition, some US states have adopted conflict minerals legislation.

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