

Conflict minerals

What you need to know
about the new disclosure and
reporting requirements and how
Ernst & Young can help





Dodd-Frank Section 1502 and the SEC's final rule

In recent years, there has been an increasing international focus on “conflict minerals” emanating from mining operations in the Democratic Republic of the Congo (DRC) and adjoining countries. Armed groups engaged in mining operations in this region are believed to subject workers and indigenous people to serious human rights abuses and are using proceeds from the sale of conflict minerals to finance regional conflicts. Governmental, industry and social issue-focused groups such as the US Government Accountability Office, the Organisation for Economic Co-operation and Development (OECD), the Electronic Industry Citizenship Coalition (EICC) and the Global e-Sustainability Initiative (GeSI) have been working to raise awareness and bring about change.

On 21 July 2010, in response to these concerns, the United States Congress enacted legislation that requires certain public companies to provide disclosures about the use of specified conflict minerals emanating from the DRC and nine adjoining countries (Covered Countries). Section 1502 of the Dodd-Frank Act is intended to make transparent the financial interests that support armed groups in the DRC area. By requiring companies using conflict minerals in their products to disclose the source of such minerals, the law is aimed at dissuading companies from continuing to engage in trade that supports regional conflicts.

Section 1502 is applicable to all SEC “issuers” (including foreign issuers) that manufacture or contract to manufacture products where “conflict minerals are necessary to the functionality or production” of the product. The industries most likely to be affected include electronics and communications, aerospace, automotive, jewelry and industrial products.

On 22 August 2012, after much public comment and a year and a half after issuance of its proposed rule, the US Securities and Exchange Commission (SEC) issued a final rule to implement the new disclosure requirements required by Dodd-Frank.

The SEC estimates that approximately 6,000 issuers will be directly impacted by the rule and that many private companies in the supply chains of these issuers will be impacted indirectly. The SEC has stated that it expects that the costs will be substantial to both issuers and non-issuer suppliers, and estimates the initial cost of compliance to be between US\$3 billion and US\$4 billion, with annual costs thereafter of between US\$207 million and US\$609 million. Public commentary on the proposed rule had previously estimated compliance costs as high as US\$16 billion.

What and where are conflict minerals?

Dodd-Frank Section 1502 defines “conflict minerals” as cassiterite, columbite-tantalite, gold and wolframite, as well as their derivatives and other minerals that the US Secretary of State may designate in the future.

The final rule exempts any conflict minerals that are “outside the supply chain” prior to 31 January 2013. Conflict minerals are “outside the supply chain” only “after any columbite-tantalite, cassiterite, and wolframite minerals have been smelted; after gold has been fully refined; or after any conflict mineral, or its derivatives, that have not been smelted or fully refined are located outside of the Covered Countries.”¹

¹See final rule, p. 129



Mineral	Description	Major uses
Cassiterite	Ore from which tin is extracted	Plating and solders for joining pipes and electronic circuits
Columbite-tantalite	Ore from which tantalum is extracted	Electrical components (including those used in mobile phones, computers, videogame consoles), aircraft and surgical components
Gold	Rare metal found in a native (pure) form and obtained as a by-product of other mining operations	Jewelry, electronic, communications and aerospace equipment
Wolframite	Ore from which tungsten is extracted	Metal wires, electrodes and contacts in lighting, electronic, electrical, heating and welding applications

Dodd-Frank Section 1502 defines the affected countries or “Covered Countries” as follows:

- ▶ Democratic Republic of the Congo (DRC)
- ▶ Central Africa Republic
- ▶ South Sudan
- ▶ Zambia
- ▶ Angola
- ▶ The Republic of the Congo
- ▶ Tanzania
- ▶ Burundi
- ▶ Rwanda
- ▶ Uganda

According to the SEC, the Covered Countries account for 15% to 20% of the world’s supply of tantalum and smaller percentages of the other three minerals.



SEC disclosure process

The SEC final rule provides for a three-step disclosure process. The SEC has also provided a flowchart summary of the final rule (see page 8) to guide issuers through these steps.



Step 1: An issuer needs to determine whether its manufactured products contain conflict minerals that subject it to the requirements of Dodd-Frank Section 1502

The rule applies not only to issuers that manufacture products, but also to those companies that contract to manufacture.

The issuer will first need to determine if any of its manufactured products contain conflict minerals and whether, for each product, such minerals are necessary to:

1. The functionality of the manufactured product
2. The product's production process

If the conflict minerals are not necessary, the issuer will not be required to take any action, make any disclosures or submit any reports. If, however, they are necessary and in the supply chain after 31 January 2013, the issuer must move to Step 2.

Contract to manufacture and mining companies

Contract to manufacture

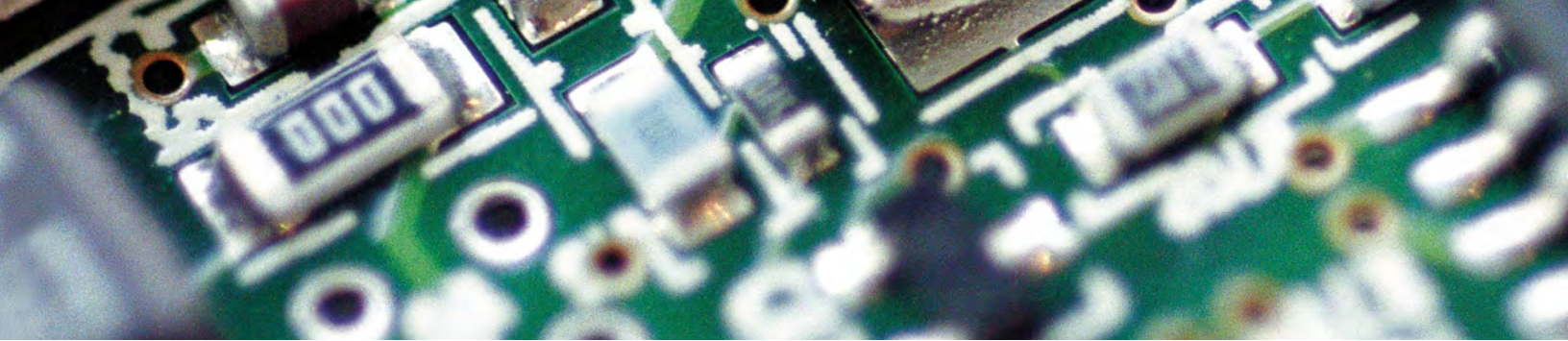
Section 1502 applies not just to manufacturers, but also to issuers who "contract to manufacture." However, the final rule, unlike the proposed rule, appears to exempt most private label retailers from its provisions. SEC guidance states that whether an issuer will be considered to "contract to manufacture" a product depends on the degree of influence it exercises over the materials, parts, ingredients or components to be included.

An issuer will not be considered to "contract to manufacture" a product if its involvement is limited to the following actions:

1. The issuer specifies or negotiates contractual terms with a manufacturer that do not directly relate to the manufacturing of the product, unless it exercises a degree of influence over the manufacturing that is practically equivalent to contracting on terms that directly relate to the manufacturing of the product
2. The issuer affixes its brand, marks, logo or label to a generic product manufactured by a third party
3. The issuer services, maintains or repairs a product manufactured by a third party

Mining companies

In a change from the draft rule, the SEC determined that mining companies are no longer considered manufacturers (and therefore not subject to the rule's direct requirements) unless the issuer also engages in manufacturing, whether directly or indirectly through contract, in addition to mining.



Necessary conflict minerals

Necessary to the functionality

SEC guidance suggests that in determining whether a conflict mineral is “necessary to the functionality” of a product, an issuer should consider:

1. Whether the conflict mineral is intentionally added to the product or any component of the product and is not a naturally occurring by-product
2. Whether the conflict mineral is necessary to the product’s generally expected function, use or purpose
3. If the conflict mineral is incorporated for purposes of ornamentation, decoration or embellishment, whether the primary purpose of the product is ornamentation or decoration

Necessary to the production

SEC guidance suggests that in determining whether a conflict mineral is “necessary to the production” of a product, an issuer should consider:

1. Whether the conflict mineral is intentionally included in the product’s production process, other than if it is included in a tool, machine or equipment used to produce the product (such as computers or power lines)
2. Whether the conflict mineral is included in the product
3. Whether the conflict mineral is necessary to produce the product

The SEC does not consider a conflict mineral “necessary to the production” of a product if the conflict mineral is used as a catalyst, or in a similar manner in another process, that is necessary to produce the product but is not contained in the final product. If, however, a conflict mineral is operating as a catalyst and remains in the product, this final rule interpretation is reversed.

Step 2: An issuer needs to determine whether its necessary conflict minerals originated in the Covered Countries

Issuers using necessary conflict minerals are required to conduct a “reasonable country of origin inquiry” (RCOI) regarding these conflict minerals. The required inquiry depends on each issuer’s “facts and circumstances,” and the actual steps of a RCOI are not prescribed. However, to satisfy the RCOI requirement, the final rule states that the inquiry must be reasonably designed to determine whether any of the conflict minerals that are not from recycled or scrap sources originated in the Covered Countries, and it must be performed in good faith.

The final rule requires an issuer that determines that its conflict minerals did not originate in the Covered Countries or did come from recycled or scrap sources to provide a special disclosure report annually on a new Form SD and to briefly describe the RCOI it used in reaching its determination. Such issuers do not have to move onto Step 3.

If, however, based on its RCOI, the issuer knows – or has reason to believe – that it has used necessary conflict minerals that originated in the Covered Countries and did not come from recycled or scrap sources, it must move on to Step 3.



Step 3: An issuer with necessary conflict minerals from Covered Countries that are not from recycled or scrap sources needs to conduct due diligence, and potentially provide a Conflict Minerals Report

The third step requires an issuer to exercise due diligence on the source and chain of custody of its conflict minerals emanating from the Covered Countries that are not from scrap or recycled.

The due diligence must be based on a nationally or internationally recognized due diligence framework, if such a framework is available for the specific conflict mineral, as well as the issuer's individual facts and circumstances. One example of such a framework is the due diligence guidance approved by the OECD: Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2011).

The goal of this due diligence is to determine whether the issuer's minerals are "DRC conflict free"² or not – in other words, whether they directly or indirectly financed or benefited armed groups in the Covered Countries.³ The State Department has published a conflict minerals map that can assist issuers in making this determination.⁴

If, in exercising due diligence, the issuer determines either that the conflict minerals are not from the Covered Countries, or are from recycled or scrap sources, it is required to describe this due diligence when it files Form SD, but it is not required to file a Conflict Minerals Report. (See SEC flowchart, page 8.)

²Products are considered "DRC conflict free" under Exchange Act Section 13(p)(1)(A)(ii) if they "do not contain minerals that directly or indirectly finance or benefit armed groups" in the Covered Countries.

³Section 1502(e) (3) of the Dodd-Frank Act defines the term "armed group" as "an armed group that is identified as perpetrators of serious human rights abuses in the annual Country Reports on Human Rights Practices under sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961, as they relate to the Covered Countries."

⁴See State Department, Humanitarian Information Unit, Democratic Republic of the Congo Mineral Exploitation by Armed Groups Map, June 28, 2010, available at https://hiu.state.gov/Products/DRC_MineralExploitation_2010Jun28_HIU_U182.pdf.

OECD due diligence standards

The final rule requires an issuer proceeding to Step 3 to conduct due diligence using a nationally or internationally recognized due diligence framework, and referenced as an example the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected And High-Risk Areas (2011).

The OECD Guidance is designed to help company managements avoid contributing to conflict through their mineral or metal purchasing decisions and practices. It includes a five-step framework companies can use to create a responsible supply chain:

1. Establish strong management systems
2. Identify and assess risk in the supply chain
3. Design and implement a strategy to respond to identified risks
4. Carry out independent third-party audit of smelters/refiners' due diligence practices
5. Report annually on supply chain due diligence



Recycled or scrap source conflict minerals

As the SEC flowchart summary (see page. 8) makes clear, if an issuer has reason to believe, as a result of its RCOI, that its conflict minerals have come from recycled or scrap sources, it is required only to file Form SD, but not to conduct due diligence. If, however, it only makes the determination that its conflict minerals from Covered Countries are from scrap source or recycled during due diligence, it is still not required to file a Conflict Minerals Report. It must merely describe the due diligence and its results briefly on Form SD.

The final rule, echoing the OECD definitions, offers the following definition of conflict minerals from recycled or scrap sources:

- ▶ They are from reclaimed end-user or post-consumer products, or scrap processed metals created during product manufacturing
- ▶ Recycled metal includes excess, obsolete, defective and scrap metal materials that contain refined or processed metals that are appropriate to recycle in the production of tin, tantalum, tungsten and/or gold
- ▶ Minerals partially processed, unprocessed or a by-product from another ore are not included in the definition of recycled metal

Conflict Minerals Report

If, on the other hand, the issuer determines that its conflict minerals are from Covered Countries and are not from scrap sources or recycled, it must file a Conflict Minerals Report as an exhibit to Form SD. That report must include a description of the measures the issuer has taken to exercise due diligence on the source and chain of custody of its conflict minerals.

The Conflict Minerals Report must include the following information:

- ▶ The country of origin of those conflict minerals
- ▶ Any efforts made to determine the mine or location of origin with the greatest possible specificity
- ▶ The facilities used to process those conflict minerals, such as the smelter or refinery through which the issuer's minerals pass
- ▶ A description of any products that are not "DRC conflict free." The form of this description is not prescribed and can be determined by the issuer, depending on its industry and individual circumstances

An issuer must obtain an independent private sector audit of its Conflict Minerals Report and include a statement in the report to this effect.

The SEC has estimated that 75% of registrants subject to Section 1502 will need to develop a Conflict Minerals Report and have it audited by an independent third party.⁶

⁵It is noted that in the OECD's Gold Supplement (June 2012) one of the "red flags" that must be considered is whether *"The gold is claimed to originate from recyclable/scrap or mixed sources and has been refined in a country where gold from conflict-affected and high-risk areas is known or reasonably suspected to transit."* Hence, in this circumstance, recyclable/scrap gold, may still warrant due diligence actions.

⁶See SEC final rule (17 CFR 240 and 249b), p. 315.



Transition period

Some issuers required to file Conflict Minerals Reports that are unable to determine whether their products are conflict free will be allowed to describe their products as “DRC conflict undeterminable” for a transitional period.

In this case, the Conflict Minerals Report must include:

- ▶ The country of origin, if known
- ▶ The facilities used to process the conflict minerals, if known
- ▶ Any efforts to determine the mine or location of origin with the greatest possible specificity, if applicable
- ▶ The steps the issuer has taken, if any, since the period covered by its last report, or will take to mitigate the risk that its necessary conflict minerals benefit armed groups
- ▶ The steps, if any, it has taken to improve its due diligence

If an issuer’s products are “DRC conflict undeterminable,” an independent private sector audit of the Conflict Minerals Report is not required.

The “undeterminable” reporting alternative is only permitted during the first two reporting cycles after the final rule takes effect, which includes the 2013 and 2014 data years. For smaller reporting companies, generally those with less than US\$75 million in outstanding shares owned by the public,⁷ this alternative will be permitted only during the first four reporting cycles after the final rule takes effect, which includes 2013 through 2016 data years. At the due date of the first reporting year after the transition periods (31 May 2016 for larger companies and 31 May 2018 for smaller companies), an issuer with “undeterminable” products will have to describe them as having “not been found to be DRC conflict free” in an audited Conflict Minerals Report.

Newly acquired companies

In response to comments on the proposed rule, the final rule allows issuers that acquire a company that previously had not been obligated to provide a specialized disclosure report for its necessary conflict minerals to delay reporting on the acquired company’s products until the end of the first reporting calendar year that begins no sooner than eight months after the effective date of the acquisition.

Independent audit report

The final rule states that the Conflict Minerals Report must be audited by an independent private sector auditor. The objective of this audit is not to confirm the “conflict free” status of a company’s products. Instead, the objective is to confirm that its due diligence conforms to the nationally or internationally recognized framework used by the company and is described properly in the Conflict Minerals Report.⁸

The SEC does not believe that it would be inconsistent with the independence requirements in Rule 2-01 of Regulation S-X if the issuer’s independent public accountant also performs the independent private sector audit of the Conflict Minerals Report.

⁷“Smaller reporting company” is defined in Rule 12b-2 [17 CFR 240.12b-2] under the Exchange Act: “The primary determinant for eligibility will be that the company have less than US\$75 million in public float. When a company is unable to calculate public float, however, such as if it has no common equity outstanding or no market price for its outstanding common equity exists at the time of the determination, the standard will be less than US\$50 million in revenue in the last fiscal year.”

⁸See SEC Final Rule, p. 285: “... for the auditor to express an opinion or conclusion as to whether the design of the issuer’s due diligence measures as set forth in the Conflict Minerals Report, with respect to the period covered by the report, is in conformity with, in all material respects, the criteria set forth in the nationally or internationally recognized due diligence framework used by the issuer, and whether the issuer’s description of the due diligence measures it performed as set forth in the Conflict Minerals Report, with respect to the period covered by the report, is consistent with the due diligence process that the issuer undertook.”



The engagement to perform the independent private sector audit of the Conflict Minerals Report would nevertheless be considered a “non-audit service” subject to the pre-approval requirements of Rule 2-01(c) (7) of Regulation S-X. In addition, the fees related to the independent private sector audit of the Conflict Minerals Report would need to be included in the “All Other Fees” category of the principal accountant fee disclosures. If the accountant were to provide services that extended beyond the scope of the independent private sector audit of the Conflict Minerals Report, the accountant would need to consider whether those services were inconsistent with Rule 2-01 of Regulation S-X.⁹

The Conflict Minerals Statutory Provision provides that the audit standards are to be established by the Government Accounting Office (GAO). The GAO has informed the SEC that existing generally accepted government auditing standards (GAGAS), such as the standards for attestation engagements or the standards for performance audits, will be applicable.

Final rule disclosures: Timing, documentation and liability

The final rule requires that the conflict minerals information in Form SD and/or in the Conflict Minerals Report cover the calendar year from January 1 to December 31 regardless of the issuer’s fiscal year-end. A Form SD covering the prior year must be provided each year by May 31. The first Form SD will be required for the calendar year ending December 31, 2013 and will need to be filed by 31 May 2014.

The final rule requires Form SD and any Conflict Minerals Report submitted as an exhibit to the form to be “filed” under the Exchange Act and thereby subject to potential Exchange Act Section 18 liability.

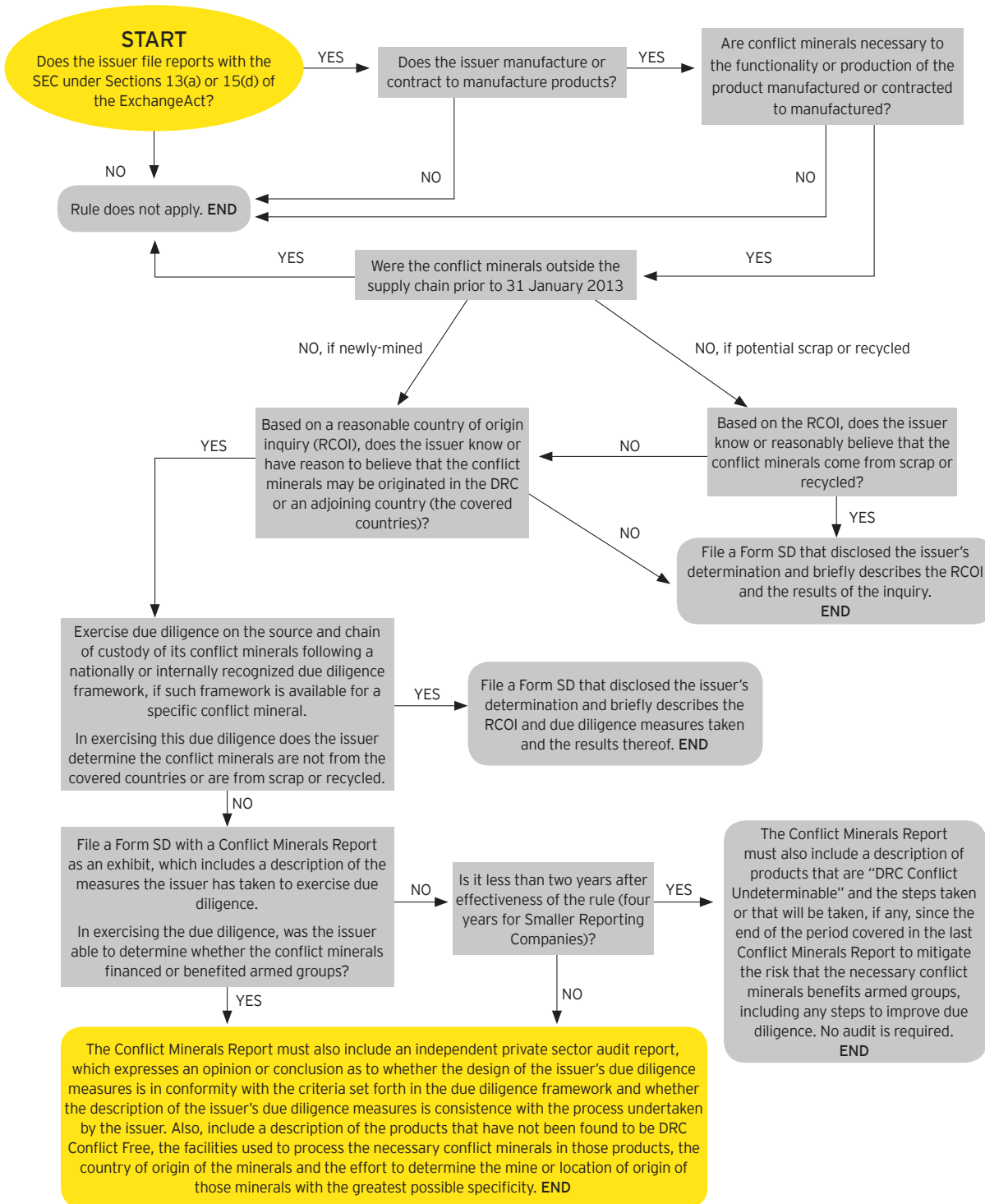
The final rule specifies that an issuer must make its Form SD disclosure or its Conflict Minerals Report available on the issuer’s Internet website for one year.

The final rule does not require an issuer to retain reviewable business records to support its RCOI conclusion, although maintenance of appropriate records may be useful in demonstrating compliance with the Final Rule, and may be required by any nationally or internationally recognized due diligence framework applied by the issuer.

⁹See final rule, p. 216.

SEC flowchart summary of the final rule

The SEC final rule provides a flowchart to summarize its application to issuers:





How Ernst & Young can help

A prudent approach to addressing the rule's requirements includes three key steps:

1. Applicability and readiness
2. Implementation
3. Reporting and assurance

Ernst & Young can help you take those steps with:

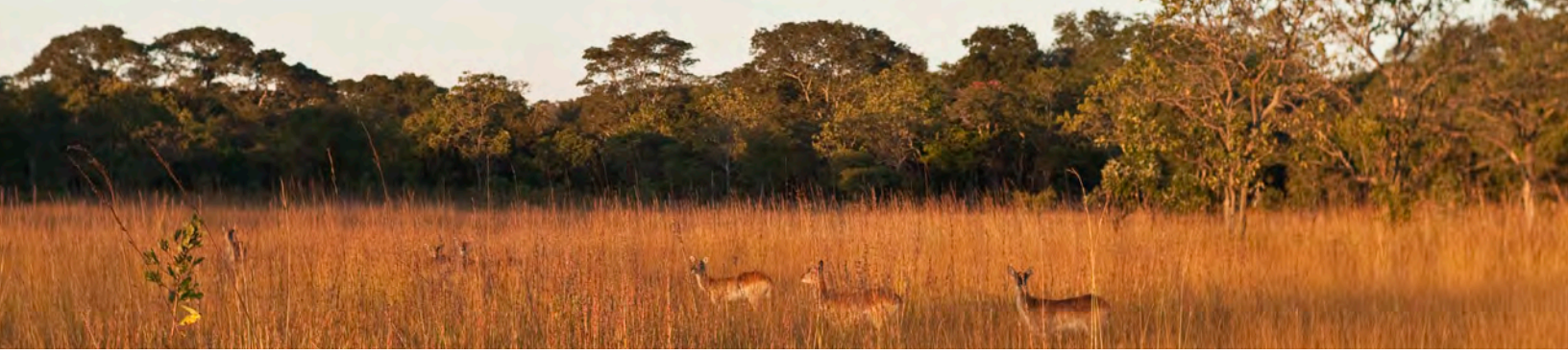
- ▶ **Our multi-disciplinary network:** Our network includes dedicated forensic, supply chain and sustainability professionals who assist clients from across industries and in countries around the world. As needed, our teams access the deep knowledge and resources of Ernst & Young, tapping into professionals with core competencies in information technology, environmental health and safety (EHS), internal audit, supply chain risk management, sustainability reporting and assurance, and a range of other key areas.
- ▶ **Our experience:** Our firm has experience in both GAGAS-related assurance engagements and matters related to conflict minerals, including Responsible Jewellery Care Certification and the Department of Defense statutory restrictions on the acquisition of specialty metals not melted or produced in the United States. We have also authored assurance opinions and conclusions on a wide range of sustainability and corporate social responsibility disclosures.
- ▶ **Our global reach:** Ernst & Young is the most globally integrated Big Four firm, bringing together more than 167,000 people across 152 countries. With competencies in assurance, tax, advisory and transactions, our professionals are ready to address your needs regardless of the geography of your supply chain or its complexity.

1. Applicability and readiness

Before taking any action, organizations should engage in robust initial planning and readiness assessment efforts and manage them as part of a larger framework with clearly understood objectives. With respect to the final rule, areas of inquiry for compliance planning might include the applicability of products to the rule, determining how to conduct a well-designed Reasonable Country of Origin Inquiry (RCOI), and determining what constitutes an adequate due diligence and Conflict Minerals Report disclosure.

There are several benefits to the planning process. Organizations that engage in such efforts will have the advantage of leveraging any existing structure, processes and data related to these inquiries for ongoing use. They may well avoid unnecessary or redundant efforts, such as going to great lengths to secure supplier responses when, in fact, existing data or input from operational personnel could have provided the same information. Most importantly, the outputs from compliance planning and readiness help to set priorities for implementing a robust conflict minerals program, as well as identifying critical gaps and risks that can be addressed prior to making external disclosures or obtaining external assurance.

At Ernst & Young, we can assist clients with compliance planning for conflict minerals. The results of our work are presented in the form of a Findings and Recommendations Report for management's consideration. This report helps clients to identify and address gaps between their current state and a future state needed to meet the reporting and documentation requirements of the final rule, and to be prepared in the event that the company's RCOI disclosure is ever questioned or its due diligence procedures are audited in accordance with GAGAS. The report also addresses practical planning needs such as assembling the right management team.



2. Implementation

In order to implement and test a conflict minerals program, the organization should next develop a set of actions supported by management and ready for assignment to designated business units.

During this step, our firm's deep experience in global supply chain networks and risk assessments is brought to bear. While the specific support activities will vary according to the needs of individual organizations, our firm's approach for implementing and testing a supply chain program relies on our IDDES methodology and its five phases:

- ▶ Identify
- ▶ Diagnose
- ▶ Design
- ▶ Execute
- ▶ Sustain

Examples of potential work steps under IDDES include:

- ▶ **Identify and Diagnose:** Identify and provide for an appropriate level of supplier monitoring and the necessary level of track/trace functionality across the supply chain. Key activities may include segmenting suppliers into risk tiers, conducting Failure Mode and Effects Analysis (FMEA) on high-risk suppliers/segments, discussing and testing mitigation options and initiating monitoring activities.
- ▶ **Design:** Design a detailed program to provide confidence that conflict minerals contained in products or used in the manufacturing process are sourced in compliance with the company's strategy and directives. Our recommendations will center on the development of an operating model that focuses on defining strategic direction and key policies and procedures, developing a governance structure, determining technology requirements, and refining and formalizing processes, roles and responsibilities.
- ▶ **Execute and Sustain:** Assist with the tactical implementation of the program, and once the program is in place, provide initial and ongoing testing of the conflict minerals controls and RCOI and OECD due diligence processes. This testing can determine if global reach has been enabled, high-risk areas have been targeted, suppliers have been certified and that processes have been modified where necessary. During the Execute and Sustain phase, our firm can also develop metrics for ongoing measurement and continuous improvement to your conflict minerals compliance program. Finally, Ernst & Young may assist with the preparation of Form SD, the Conflicts Minerals Report and disclosure on the organization's website as required by the rule.

Questions we are receiving from our clients

What individuals or business units are addressing this issue in most companies?

In order to identify a consistent approach, firms are commonly placing this issue at a corporate level and developing internal task groups that are headed by members of their regulatory affairs, legal or corporate compliance departments. We have also encountered firms that are placing the issue with sustainability or environmental health and safety departments. Regardless of the ownership, most firms are crafting matrix-style teams that include members of these business units and key personnel in operations and procurement.

What actions are necessary to be able to negate further due diligence efforts resulting from a reasonable country of origin inquiry (RCOI)?

As the SEC flowchart included in the final rule makes clear (see page 9), firms may be able to forgo due diligence efforts and the development of a Conflict Minerals Report if, after completing an RCOI, the firm has no knowledge of or reason to believe that the conflict minerals originated in the DRC or an adjoining country. For obvious reasons, many firms are asking about the nature of the work steps required for a "No" response in this decision box –and how rigorous they have to be.

While the answers will vary greatly depending on the conflict minerals used in a firm's products and its global sourcing model, a couple of considerations should be kept in mind by all reporters. First, note that the SEC's cost assessment assumed that 75% of all registrants will require a future audit of a Conflict Minerals Report. This suggests that the agency assumed that the majority of the registrants will not be able to say "No" based on an RCOI.

Second, some industry sector sustainability leaders have said that they will be engaging in conflict minerals due diligence based on the requirements in the final rule. There may therefore be some reputational risk attached to arguing that one is "conflict free" as a result of RCOI efforts alone, particularly in high visibility sectors such as consumer products, where there may be challenges from competitors. For further insights, refer to the OECD's "red flags" in both their gold and tin, tungsten and tantalum due diligence supplements.



What is our exposure if our Form SD disclosures are later determined to be in error?

The final rule states that statements in the Form SD are subject to SEC Section 18 liability. Section 18(a) states [emphasis added]:

*“Any person who shall make or cause to be made any statement in any application, report, or document filed pursuant to this title or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 15 of this title, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, shall be liable to any person (not knowing that such statement was false or misleading) who, in reliance upon such statement shall have purchased or sold a security at a price which was affected by such statement, for damages caused by such reliance, **unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading.** A person seeking to enforce such liability may sue at law or in equity in any court of competent jurisdiction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit, and assess reasonable costs, including reasonable attorneys’ fees, against either party litigant.”*

Given this language, one must consider the value of developing and maintaining reviewable business records supporting RCOI and due diligence efforts, even though they are not specifically required under the rule.

What systems may I leverage to best address our data needs to respond to the rule?

Data set needs will vary by industry and the complexity of the supply chain. Some companies have established databases or management systems to track product materials as part of prior efforts associated with the European Union’s Restriction of Hazardous Substances (RoHS) Directive or defense industry-related restrictions on the acquisition of specialty metals not melted or produced in the United States. In addition, prior to the release of the final rule, some industry groups such as the Electronic Industry Citizenship Coalition and the Automotive Industry Action Group developed suggestions or tools for surveying members of the supply chain that could easily be adopted for the use for their members.

3. Reporting and assurance

Given the SEC estimate that three out of four issuers subject to Section 1502 will need to file an audited Conflict Minerals Report, it is worth noting that the final rule allows such audits to be conducted by an issuer’s current independent public accountant.¹⁰ This audit can be performed in accordance with either the attestation or performance audit requirements of GAGAS.¹¹

While the GAGAS for attestation engagements follow a prescribed format, performance audits are allowed more variation. However, some companies may not find such variation desirable and may choose the stricter attestation engagement standards because they want the public to be able to easily compare them with other companies in their industry.

In addition, GAGAS attestation engagements must be performed by a licensed public accounting firm. This is not required for GAGAS performance audits, although all practitioners must still satisfy certain qualification requirements, such as continuing professional education, quality control measures and independent peer reviews.

Ernst & Young is well positioned to conduct the audit of a Conflict Minerals Report. We have a global assurance methodology for the audit of non-financial information that is ideally suited for the audit of the Conflict Minerals Report under GAGAS.

¹⁰See SEC final rule (17 CFR 240 and 249b), p. 216: “Therefore, we do not believe that it would be inconsistent with the independence requirements in Rule 2-01 of Regulation S-X if the independent public accountant also performs the independent private sector audit of the Conflict Minerals Report.”

¹¹Ibid, p. 215.

Our point of view

Download our current thought leadership and research findings at ey.com/climatechange



How sustainability has expanded the role of the CFO



Working together: Linking sustainability and tax



Access our thought leadership anywhere with EY Insights, our new mobile app. Visit eyinsights.com.

Contact your local Ernst and Young representative to find out how we can help you.



About Ernst & Young

Ernst & Young is a global leader in assurance, tax, transaction and advisory services. Worldwide, our 167,000 people are united by our shared values and an unwavering commitment to quality. We make a difference by helping our people, our clients and our wider communities achieve their potential.

Ernst & Young refers to the global organization of member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit www.ey.com.

Ernst & Young LLP is a client-serving member firm of Ernst & Young Global Limited operating in the US.

About Ernst & Young's Climate Change and Sustainability Services

Climate change and sustainability continue to rise on the agendas of governments and organizations around the world with rapidly evolving drivers and expectations. Your business faces regulatory requirements and the need to meet stakeholder expectations as well as respond to the opportunities presented for revenue generation and cost reduction. This means a fundamental and complex transformation for many organizations and the embedding of climate change and sustainability into core business activities to achieve short term objectives and create long-term shareholder value. The industry and countries in which you operate as well as your extended business relationships introduce additional complexity, challenges, responsibilities and opportunities. Our global, multidisciplinary team combines our core experience in assurance, tax, transactions and advisory with climate change and sustainability skills and deep industry knowledge. You'll receive a tailored service supported by global methodologies to address issues relating to your specific needs. Wherever you are in the world, Ernst & Young can provide the right professionals to support you in achieving your potential. It's how we make a difference.

© 2012 EYGM Limited.
All Rights Reserved.

SCORE No. F00043
1209-1389680



In line with Ernst & Young's commitment to minimize its impact on the environment, this document has been printed on paper with a high recycled content.

This publication has been carefully prepared but it necessarily contains information in summary form and is therefore intended for general guidance only; it is not intended to be a substitute for detailed research or the exercise of professional judgment. The information presented in this publication should not be construed as legal, tax, accounting, or any other professional advice or service. Ernst & Young LLP can accept no responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. You should consult with Ernst & Young LLP or other professional advisors familiar with your particular factual situation for advice concerning specific audit, tax or other matters before making any decision.