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Conflict minerals The retail perspective

September 2014



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The current retail environment

As retailers seek to offset the impact of the relatively slow recovery of the U.S. economy, opportunities in new or emerging markets have become very attractive. At the same time, however, these opportunities present emerging risks such as exposure to new regulatory requirements, additional risks to compliance with U.S. laws and regulations, and cultural difference challenges.

Complex and conflicting supply chain regulations across jurisdictions require vigilant monitoring on a global basis. Strong collaboration across supply chain nodes has become critical in a fluid global trade environment. Various standards, customer requirements and social pressures from non-governmental organization (NGOs) and consumers are emerging at rapid rates, increasing the need for coordinated compliance programs and activities.

As retailers experience an acute increase in the cost of compliance activities, many may find it difficult to estimate their current compliance costs and determine how to align resources against their most critical compliance risks. Leading retailers are increasingly focused on alignment of supply chain compliance processes to drive increased transparency across the value chain and compliance with regulatory and other stakeholder requirements.



The conflict minerals environment and the retail impact

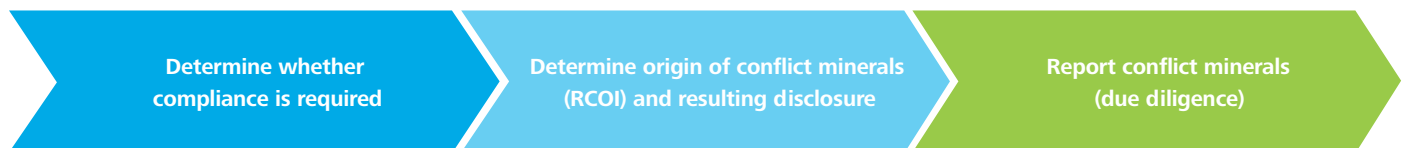
The current state of conflict minerals

Another step in the movement around supply chain transparency was added when the Securities and Exchange Commission (SEC) issued its final rule on Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Final Rule”). As the marketplace attention around conflict minerals continues to evolve, so will expectations for greater transparency around registrants’ broader supply chain risk management practices. Registrants will be well-served by developing more comprehensive and integrated approaches to supply chain compliance activities and disclosure practices in a manner that permits flexibility in adapting to changing and evolving regulations and disclosure requirements. Registrants should consider how to integrate their conflict minerals compliance program with other supply chain compliance activities (e.g., Foreign Corrupt Practices Act, California Transparency in Supply Chains Act, The Accord on Fire and Building Safety in Bangladesh, etc.) to leverage potential efficiencies and proactively get in front of new regulations.

Many registrants in the retail sector are now asking how to translate the Year 1 filing results and lessons learned into next steps they can take to improve their conflict minerals compliance activities and reporting process going forward. Year 1 filings revealed tremendous diversity in approaches to preparing Form SD and the Conflict Minerals Report (CMR), from the organization of content, to the depth of data analysis and disclosure, to commitments regarding continuous improvement, to name a few.

What does the Final Rule require that is unique to retailers?

The Final Rule requires certain registrants to follow a three-step process for evaluating conflict minerals (tin, tantalum, tungsten, or gold commonly referred to as 3TG) contained in their products and to file a Form SD annually by May 31, describing their process for conducting a reasonable country of origin inquiry (RCOI) regarding the origin of its conflict minerals². Retailers are initially challenged with the question as to whether the Final Rule is applicable (did they contract to manufacture?). After applicability of the Final Rule is confirmed, many retailers face challenges in scoping their conflict minerals compliance program and developing long-term supplier relationships while still pursuing the goals of the conflict minerals policy. In certain circumstances, the retailer is required to include a CMR describing its due diligence measures and, for certain of those situations, to have an independent private sector audit (IPSA) performed in accordance with generally accepted government auditing standards (GAGAS). Implementing a process that is sustainable and repeatable is an obstacle for many retailers whose products vary from year-to-year.

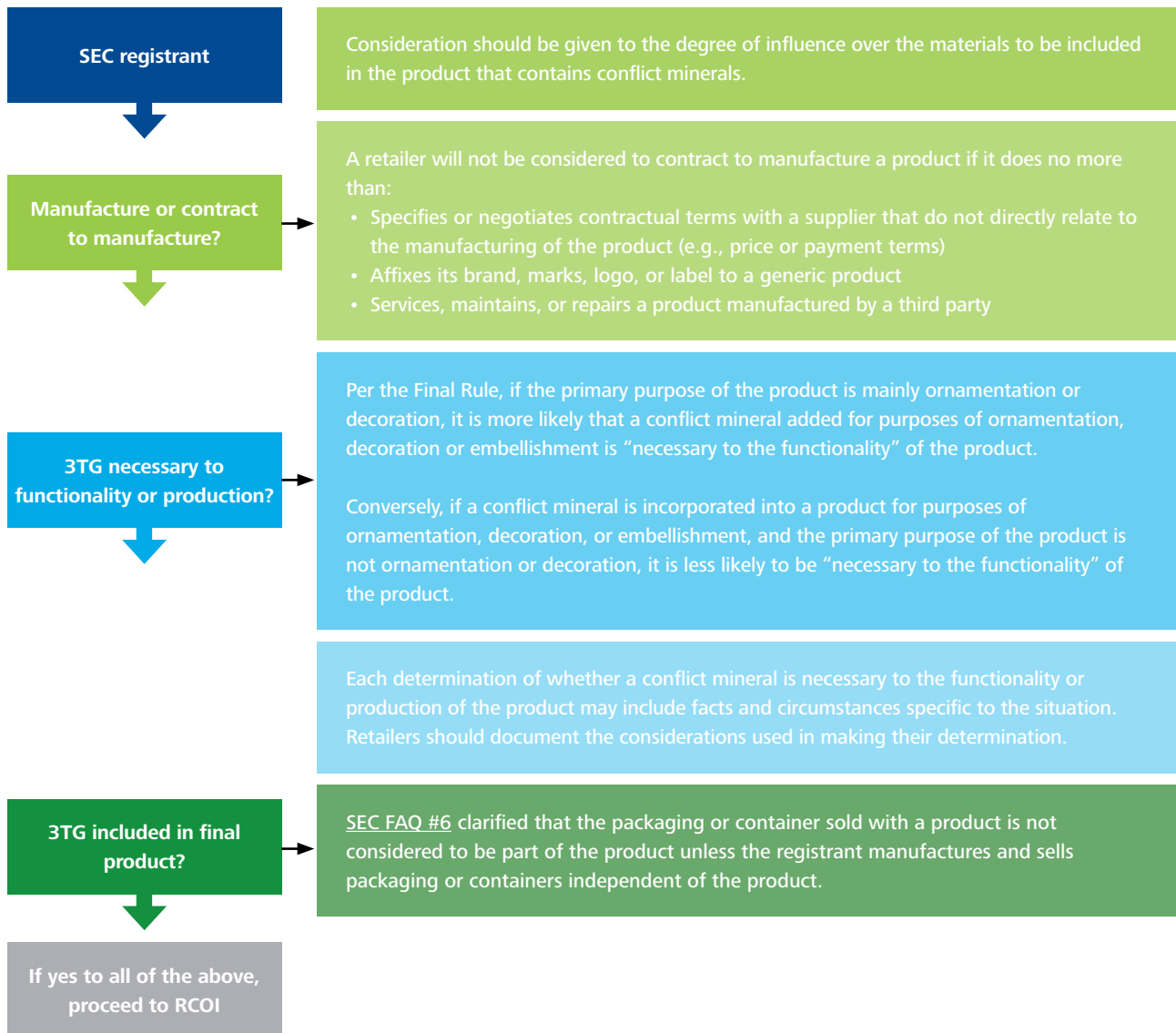


Some retailers may not be subject to the Final Rule

Retailers are required to comply with the Final Rule if they manufacture, or contract to manufacture, a product containing conflict minerals. The Final Rule has a number of areas subject to significant judgment, including definitions for “contract to manufacture” and “necessary to the functionality or production”. The question as to whether a registrant contracts to manufacture a product will largely depend on the degree of influence over the manufacturing process of the product.

The [SEC’s Frequently Asked Questions](#) provided some clarity around the considerations registrants should evaluate when assessing whether they were subject to the Final Rule. Additionally, many industry organizations such as the American Apparel and Footwear Association (AAFA), the National Retail Federation (NRF), and Retail Industry Leaders Association (RILA) took steps to define interpretations for their member companies, and collaborate on an industry approach to conflict minerals.

Many retailers were faced with the following considerations when determining whether compliance was required:



The road ahead

Leading practices among retailers emerging in Year 1

We observed a tremendous diversity in approaches to conflict minerals compliance programs during the 2013 calendar year; however the following leading practices emerged among retailers in complying with the Final Rule during the first reporting year:

- Establishing a conflict minerals steering committee and a cross-functional team of representatives from the various business areas affected by the requirements
- Creating a conflict minerals policy and taking measures to work with factories and suppliers, including through supplier agreements, contracts and/or purchase orders, to promote supplier collaboration and support for the retailer’s efforts to comply with the Final Rule
- Engaging with industry groups such as the AAFA, NRF, and RILA to gain access to industry convening, discussions and leading industry practices

- Employing a conflict minerals technology solution to facilitate supplier surveys, track responses, and gather data for reporting
- Establishing a risk-based approach to guide due diligence measures with suppliers and/or smelters/refiners
- Conducting training with suppliers to promote higher quality, more accurate and complete supplier responses

What to think about in Year 2

It is expected that Year 2 conflict minerals compliance activities will focus on driving improvements to Year 1 performance (e.g., increased supplier response rate, improvements to completeness and accuracy of data received, among others). The following considerations should be contemplated by retailers when driving updates to their conflict minerals compliance program for Year 2:

Retailers often have dynamic supply chains due to product variation	Consider steps necessary to develop a sustainable conflict minerals compliance program that accommodates changing product lines and suppliers, while simultaneously incorporating measures to build longer term supplier relationships.
Many retailers faced a lack of data quality in the information received from suppliers in Year 1	Provide training to suppliers to reinforce expectations of the supplier to put in place a due diligence program aligned with the retailer’s conflict minerals policy
Engage with industry conflict minerals working groups	Engage with industry conflict minerals working groups. Retail industry conflict minerals working groups were, in many cases, at the forefront of evaluating and assisting in the interpretation of the challenging elements of the Final Rule for retailers.
Many retailers will still be subject to the IPSA requirement	Prepare for the IPSA. Although currently the IPSA is only required if a retailer elects to label any of its products ‘DRC conflict free’, the transition period will expire in the near term and the IPSA will be required beyond just opting to declare ‘DRC conflict free’. Retailers should be mindful of the IPSA objectives and take the necessary measures to enhance the level of documentation in place to support the design of the due diligence program to conform to the Organisation for Economic Co-operation and Development (OECD) Framework and to support the due diligence measures performed as disclosed within the CMR.
Retailers should focus on the organization of the CMR content and the potential implications for a future IPSA	Consider more clearly defining where the RCOI ends and due diligence begins, and the corresponding OECD Framework steps used to guide each. Additionally, retailers should distinctly separate such disclosures within the CMR to clearly identify the subject matter within the CMR to be subject to the IPSA.

How can Deloitte help your company in the retail sector?

We are working with clients in various capacities supporting the development and implementation of a conflict minerals compliance program. Our breadth conflict minerals services includes the following:

- Assisting companies in assessing whether the Final Rule applies
- Assisting companies from start to finish in implementing a conflict minerals compliance program
- Providing advice and recommendations to companies as they proceed through their conflict minerals compliance program
- Performing gap analyses and IPSA readiness services for companies' conflict minerals compliance programs
- Providing advice and recommendations to companies on drafting the Form SD and CMR
- Performing the IPSA of the CMR

Our eminence in conflict minerals

To keep up with current events related to conflict minerals, we publish thought leadership that helps our clients understand conflict minerals and be aware of further developments, including the following:

• **Conflict minerals: Evolving compliance**

challenges: With the first conflict minerals filing deadline now behind us, it has become increasingly clear how challenging it is for registrants to gain visibility and transparency into the conflict minerals supply chain. As the marketplace attention around conflict minerals continues to evolve, so will expectations for greater transparency around registrants' broader supply chain risk management practices. This paper addresses what is required, Year 1 challenges and emerging trends, and considerations for Year 2.

• **Heads Up: Navigating Next Steps After the Year 1 Form SD and Conflict Minerals Reporting Cycle:**

This Heads Up discusses findings from our analysis of registrants' first filing under the SEC's final rule on conflict minerals and provides insights for registrants as they consider conflict minerals compliance and reporting improvements for future filings in anticipation of an independent private sector audit.



Deloitte LLP and its subsidiaries provide services to 80% of the Fortune 500 retailers and distributors through more than 2,100 professionals.

Specifically we serve:

- Over 70% of the Fortune 500 specialty apparel retailers
- 100% of the Fortune 500 internet services retailers
- 90% of the Fortune 500 general merchandisers
- Over 85% of the Fortune 500 food and drug stores
- Over 75% of the Fortune 500 wholesale distribution companies
- Over 70% of the Fortune 500 specialty retailers
- Over 55% of the Fortune 500 auto retailing and auto services companies

Source: Fortune 500 list and Deloitte Analysis November 6, 2013

• **Industry insights: Consumer and Industrial Products (C&IP) Conflict Minerals Year 1**

Reporting Trends: This publication focuses on the C&IP industry which represented the majority of registrants filing a Form SD (approximately 54% of Year 1 filings). Based on Deloitte's analysis of the Year 1 filings submitted, we are sharing the insights regarding trends among the C&IP industry sectors, including the retail sector.

This information, along with other materials, is published on our website at: http://www.deloitte.com/view/en_US/us/Services/additional-services/deloitte-sustainability/Conflict-Minerals/index.htm

Endnotes

1. The covered countries include: Angola, Burundi, Central African Republic, the Democratic Republic of the Congo (DRC), the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia

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