KING & SPALDING

Webcast Highlights

Conflict minerals provision of the Dodd-Frank Act: Debrief of SEC's final rule[1]

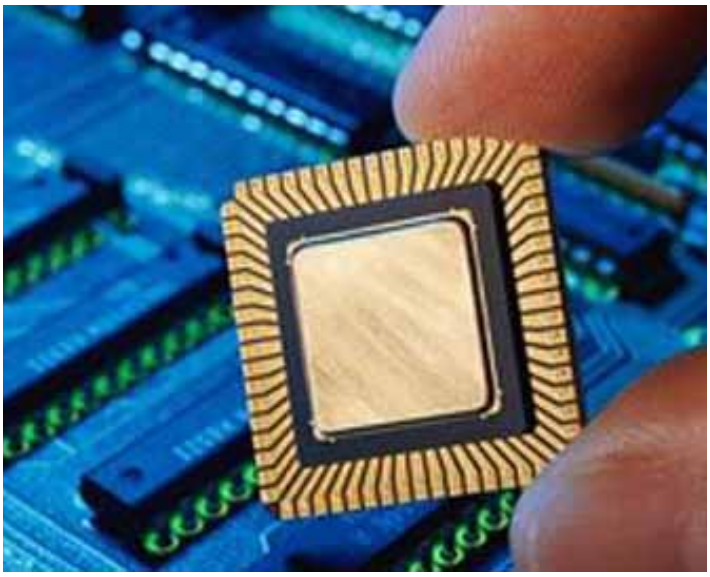
On August 22, the Securities and Exchange Commission (SEC) voted to adopt a final rule regarding disclosure and reporting obligations with respect to the use of so-called "conflict minerals" (tin, tantalum, tungsten, and gold, commonly referred to as "3TG") under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act). Publicly traded companies in a variety of industries—electronics, aerospace, automotive, industrial machinery, healthcare devices, jewelry, diversified industrials, and consumer goods—that use conflict minerals in their products or manufacturing processes face a new specialized disclosure requirement as a result of Section 1502 of the Act.

The provision is likely to affect a wide range of functions and processes in companies, from the finance and legal teams to procurement and corporate sustainability. Because of the widespread use of these minerals, the SEC anticipates the disclosures could affect about 6,000 issuers, as well as many more companies in their supply chains.

The Webcast was presented by **Jim Low**, a partner and the leader of KPMG's Americas' Regulatory Center of Excellence, with **Bala Lakshman**, a director at KPMG. **Keith Townsend**, a partner at the law firm of King & Spalding and **Jeff Perry**, an attorney also with King & Spalding, provided an overview of the final rule. The four participants engaged in a roundtable discussion and answered questions from clients and others that had been submitted throughout the webcast and based on various discussions over a period time prior and post finalization of the rule.

To view the full Webcast, click here for a replay. The highlights included:

Companies are advised to have a policy regarding conflict minerals and should communicate it clearly to suppliers and the wider community.
The final rule states that an issuer's publicly stated policy on conflict minerals could form part of the company's reasonable



country of origin inquiry (RCOI) and would therefore be disclosed in its Form SD[2]. This approach will not only enable the company to comply with the law; it will also communicate to suppliers an Issuers' commitment and philosophy towards this rule. KPMG research identified 77 companies that have conflict minerals policies on their web sites (as of the first quarter of 2012), almost three quarters of whom were manufacturers of electronics and semiconductors.

The final rule differentiates between a reasonable country of origin inquiry (RCOI) and supply chain due diligence.
If a company finds that its products use tin, tantalum, tungsten and gold, the next step is to determine the country of origin: does the company have reason to believe that the minerals *may have* originated in the Democratic Republic of Congo (DRC) or the surrounding area or are from scrap or recycled materials? If they may have originated in the DRC, then the key step for RCOI may be to identify a self-certified conflict-free smelter. If the RCOI *does not* indicate that the minerals came from conflict-free smelters, or an Issuer cannot reasonably determine the minerals did or may not have come from the

[1] SEC's final rules: http://sec.gov/rules/final/2012/34-67716.pdf

[2] An example of Form SD can be found in the Appendix (beginning on page 344) of the SEC's final rules.

Covered Countries or is not or may not be scrap or reycyled then the company will be required to undertake due diligence to determine whether the conflict minerals financed or benefitted armed groups in the DRC.

Companies have less than two years to use the category "conflict free indeterminable" The first conflict minerals disclosure from all Issuers is due by May 31, 2014 and will cover products manufactured during calendar year 2013, irrespective of the fiscal year of the company. Two years later (May 31, 2016), for large companies the category conflict-free indeterminable will no longer be an option. This creates a powerful incentive to seek conflict-free sources before that point, given the reputational risks of declaring that their minerals have not been found to be "DRC conflict free". Smaller reporting companies have two more years to make this determination (i.e., May 31, 2018).

KPMG recommends adopting a four-step approach to compliance. Step one is to develop a compliance strategy, using the due diligence guidelines created by the Organization for Economic Co-operation and Development (OECD). Step two is to identify 3TG suppliers and conduct RCOI and, if necessary, due diligence of the supply chain. Step three is to design a process that is replicable on an annual basis. Step four is to prepare for SEC disclosure, with a conflict minerals report (if necessary) as required by the final rule. Companies should prepare for an external audit if necessary.

Large companies would be advised to conduct a pilot program to begin with. This may lengthen the implementation time, but it is likely to enable companies to identify some of the pitfalls early on. Large companies will be able to develop a process that can then be rolled out on a broader scale. Smaller companies with fewer products may not need to start with a pilot program.

The definition of "contract to manufacture" depends on the degree of influence a company exercises over the product's materials, parts, ingredients or components. Most of the time, a company is not considered to "contract to manufacture" a product if it merely negotiates contractual terms that do not relate to manufacturing, affixes its brand to a generic product, or services/repairs a product. But a trade-off will need to be made: if the degree of influence is defined too narrowly, there is a risk of adverse publicity; if it is defined too broadly, a company may have difficulty completing its due diligence in time and may not be in-line with its peers.

At every step of the process, companies would be wise to retain all relevant documents in the event of a question from an external source, whether it be the SEC, a shareholder, a media organization or a non-governmental organization. To view the full Webcast, click here for a replay.

KPMG's Americas' Regulatory Center of Excellence (CoE)

KPMG's Americas' Regulatory CoE, based in New York, is made up of key industry practitioners and regulatory advisers from across KPMG's global network who work with clients to distil the impact of regulatory developments on their businesses and advise them on how to adapt their business models to better thrive in this dynamic environment. Visit www.kpmg.com/regulatorychallenges for KPMG's global site highlighting various regulatory challenges. To contact the Americas' Regulatory CoE: us-cssfsregulareform@kpmg.com

As part of the CoE, a team has been formed to focus on the topic of conflict minerals. Visit the conflict minerals page, www.kpmg.com/conflictminerals. To view KPMG's Conflict Minerals site, www.kpmg.com/conflictminerals. To contact the Conflict Minerals team: us-cssconflictmin@kpmg.com.

King & Spalding

Celebrating more than 125 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the FORTUNE Global 100, with 800 lawyers in 17 offices in the United States, Europe, the Middle East, and Asia. The firm has handled matters in over 160 countries on 6 continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients. More information is available at www.kslaw.com.