



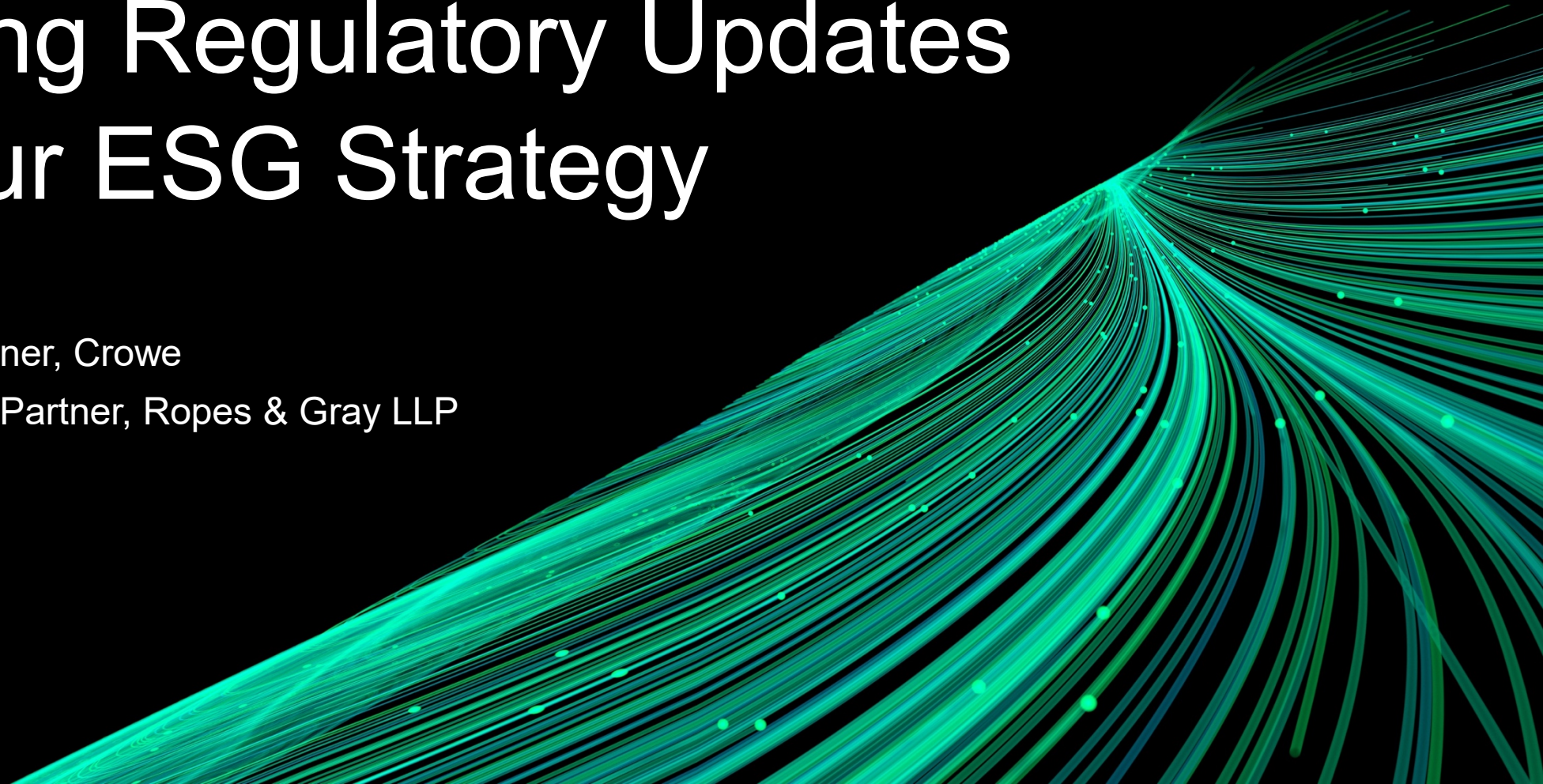
ROPES & GRAY

Factoring Regulatory Updates into Your ESG Strategy

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Presenters



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Agenda

01

Updates on
key regulations
and expectations
from the SEC

02

Tips for
managing your conflict
minerals filing

03

Best practices
and hot topics in
the ESG space

ESG Disclosure and Compliance – Regulation Is Just One Driver

Regulatory requirements, such as conflict minerals and modern slavery reporting

Socially responsible or ethical branding, especially for consumer-facing businesses

Attracting and retaining employees that want to work at a company that shares their values

Showing compliance with customer requirements for companies that are part of a commercial supply chain

Communicating expectations to vendors

Demonstrating good citizenship to communities and regulators

For public companies, meeting the information needs of investors

For public companies, managing ESG ratings, which largely are based on publicly disclosed information

Keeping pace with peers and competitors

The Conflict Minerals Filing Deadline Is Fast Approaching – the CY2021 Filing

The Basics

- Filings are due on May 31, 2022
- Substantive Conflict Minerals Rule requirements remain the same as last year

2022 Filing Tips

- Incorporate form updates
- Scrub your CMR
- Review smelter and refiner lists and consider contextual disclosure
- Take a fresh look at your conflict minerals policy
- Consider ESG ratings

Recent Form Updates

Cover Page

OMB APPROVAL	
OMB Number:	3235-0697
Expires:	July 31, 2024
Estimated average burden hours per response:	... 477.89

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM SD
SPECIALIZED DISCLOSURE REPORT

(Exact name of the registrant as specified in its charter)

(State or other jurisdiction of incorporation) (Commission file number)

(Address of principle executive offices) (Zip code)

(Name and telephone number, including area code, of the person to contact in connection with this report.)

Check the appropriate box to indicate the rule pursuant to which this form is being filed:

— Rule 13p-1 under the Securities Exchange Act (17 CFR 240.13p-1) for the reporting period from January 1 to December 31, _____ .

— Rule 13q-1 under the Securities Exchange Act (17 CFR 240.13q-1) for the fiscal year ended _____ .

Exhibit Numbering

Section 3 – Exhibits

Item 3.01 Exhibits

List below the following exhibits submitted as part of this report:

Exhibit 1.01 – Conflict Minerals Report as required by Items 1.01 and 1.02 of this Form.

Exhibit 2.01 – Resource Extraction Payment Report as required by Item 2.01 of this Form.

Exhibit 3.01 – Opinion of Counsel as required by Rule 13q-1(d)(1) or (2) (17 CFR

<https://www.sec.gov/files/formsd.pdf>

Scrub Your Filing – Common Issues



Broken links to policies and grievance mechanisms



Outdated references to industry initiatives



Inaccurate description of RCOI and/or due diligence



Old business descriptions



Future program enhancements that always remain in the future



Old safe harbor statements

Recent SOR Developments

U.S. DEPARTMENT OF THE TREASURY

PRESS RELEASES

Treasury Sanctions Alain Goetz and a Network of Companies Involved in the Illicit Gold Trade

March 17, 2022

Action Highlights U.S. Focus on Illicit Exports of Gold from the Democratic Republic of the Congo

WASHINGTON — Today, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), sanctioned Alain Goetz, the African Gold Refinery in Uganda, and a network of companies involved in the illicit movement of gold valued at hundreds of millions of dollars per year from the Democratic Republic of the Congo (DRC).

<https://home.treasury.gov/news/press-releases/jy0664>

LONDON BULLION MARKET ASSOCIATION (LBMA)

MARCH 07, 2022

Good Delivery List Update: Gold & Silver Russian Refiners Suspended

In light of UK/EU/US sanctions and to ensure an orderly market, LBMA has suspended the following gold and silver refiners with immediate effect:

- JSC Krastsvetmet
- JSC Novosibirsk Refinery
- JSC Uralelectromed
- Moscow Special Alloys Processing Plant
- Prioksky Plant of Non-Ferrous Metals
- Shyolkovsky Factory of Secondary Precious Metals, SOE

<https://www.lbma.org.uk/articles/good-delivery-list-update-gold-silver-russian-refiners-suspended>

Consider both CY2021 disclosures and CY2022 compliance procedures

Is Your Conflict Minerals Policy Current?

Threshold Questions

Does it reflect what you are doing?

Does it reflect your current supplier expectations?

Does it sync up with your supplier code of conduct and/or human rights policy?

Does it align with commercial customer requirements?

Does it read as an old policy?

Policy Enhancement Considerations

- Reference the EU Regulation?
- Address global CAHRAs?
- Address responsible minerals sourcing more broadly?
- Tie into other policies?

Most Recent CAHRA List Published June 2021

Indicative, non-exhaustive list that includes 29 countries

- Compiled by RAND International; based on 26 resources and datasets; largely based on desk research and did not involve field work or widespread primary data collection
- Intended to facilitate calibration of due diligence efforts by EU importers of in-scope 3TG; not intended to take the place of broader due diligence efforts by importers
- Not intended as a blacklist or to capture all areas that present human rights concerns or all types of issues

<https://www.cahraslist.net/cahras>

Conflict Minerals Within the Broader ESG Framework

ESG integration has gone mainstream



Investors are proactively considering ESG factors

Data analytics providers are taking responsible minerals sourcing into account



Meeting Modern Slavery Statement Requirements

	CA Transparency in Supply Chains Act	UK MSA	Australia Commonwealth MSA
Jurisdiction	California, United States	United Kingdom	Australia (federal)
Compliance Threshold	Retailer or manufacturer with annual worldwide gross receipts in excess of US \$100 million	Total annual turnover of at least £36 million	Annual consolidated worldwide revenue of more than A\$100 million
Nexus	Identifies as a retail seller or manufacturer in its CA tax returns	Carries on a business (including a trade or profession) or a part of a business in the UK	Is either an Australian entity or carries on business in Australia

Strongly encouraged (UK) or required (AUS) within 6 months after FYE

Dynamics

- Statements are receiving greater external scrutiny
- Liability is increasing

Evolving Practices

- Combined global statement
- Centralized responsibility/oversight
- Greater consideration of intersection with trade and mHRDD compliance requirements
- More rigorous review process

CSR-Focused Regulation is Increasing

Four to Manage



Uyghur Forced Labor Prevention Act (U.S.)



Transparency Act (Norway)



Due Diligence in the Supply Chain Act (Germany)



Child labor due diligence requirements (Switzerland)

Two to Watch



Climate-risk disclosure (U.S.)



Corporate Sustainability Due Diligence Directive (EU)

All require enhancements to processes/procedures
Most require disclosure
Penalties/other consequences for noncompliance

Threshold Questions

- Are you subject?
- Are you indirectly picked up?
- Are your compliance procedures sufficient?

Uyghur Forced Labor Prevention Act – Fast Facts

Signed December 23, 2021



UNITED STATES CONGRESS

Strong bi-partisan support

House: 428-1; Senate: 100-0

Key Features

- Establishes forced labor presumption for XUAR-linked goods
- Requires development of U.S. government strategy to address XUAR forced labor
- Enhances authority to impose sanctions

<https://www.whitehouse.gov/briefing-room/legislation/2021/12/23/bill-signed-h-r-6256/>

UFLPA – Additional Details

Section 3: Creates a rebuttable presumption that, for purposes of section 307 of the Tariff Act, the following are produced using forced labor:

Goods produced wholly or in part in the Xinjiang Uyghur Autonomous Region

Goods produced by entities outside of the XUAR that participate in pairing and other government-sponsored labor programs that involve forced labor; these entities will be contained on a list to be prepared by the Forced Labor Enforcement Task Force

Effective June 21, 2022

Exceptions to the Presumption

- The Commissioner of U.S. Customs and Border Protection determines the importer has (1) fully complied with guidance and implementing regulations issued pursuant to the Act and (2) completely and substantively responded to all inquiries for information submitted by the Commissioner to ascertain whether the goods were produced wholly or in part with forced labor
- If, by clear and convincing evidence, the Commissioner determines that the goods were not produced wholly or in part by forced labor
 - CAATSA FAQ: “Clear and convincing evidence” is a higher standard of proof than a preponderance of the evidence, and generally means that a claim or contention is highly probable; under the CAATSA the importer carries the burden to overcome the presumption by providing sufficient information to meet the clear and convincing standard

Section 3 of the UFLPA authorizes the Commissioner to prescribe regulations to implement these exceptions

If the CBP Commissioner determines an exception to the presumption is appropriate, the Commissioner must submit to the appropriate congressional committees and make available to the public, within 30 days after the determination, a report identifying the goods and evidence considered

<https://www.whitehouse.gov/briefing-room/legislation/2021/12/23/bill-signed-h-r-6256/>

German Due Diligence in the Supply Chain Act

Subject Companies

Head office, principal place of business, administrative seat, statutory seat or branch office in Germany

2023: 3,000 employees

2024: 1,000 employees



Issues Addressed

- A broad range of human rights risks
- Environmental risks that can lead to human rights violations

Duty of Care

- Responsibility for managing and addressing human rights and environmental risks extends to the entire supply chain
- The duty of care is based on the U.N. Guiding Principles on Business and Human Rights

Reporting

- Requires annual reporting on diligence
 - Human rights and environmental risks identified
 - Measures taken to fulfill the duties of care
 - How the company assesses the impact and effectiveness of the measures taken
 - The conclusions drawn from the assessment for future measures

Penalties

- Fines can be up to 2% of average annual sales

Norwegian Transparency Act

Covered Companies

Enterprises domiciled in Norway; large foreign enterprises that offer goods and services in Norway that are taxable in Norway

and

Two of the following thresholds:

- Sales of NOK 70 million
- Balance sheet amount of NOK 35 million
- Average number of employees during the fiscal year of 50



Effective Date
July 1, 2022

*Addresses fundamental human rights
and decent working conditions*

Due Diligence

- To be carried out in accordance with the OECD Guidelines for Multinational Enterprises

Reporting

- Must publish a statement by each June 30th containing at least:
 - A general description of the business, its area of operation and guidelines and procedures for addressing actual and potential adverse impacts on fundamental human rights and decent working conditions
 - Adverse impacts and significant risks of adverse impacts uncovered through due diligence
 - The measures the enterprise has implemented or plans to take to cease or limit the adverse impacts, and the results or expected results of the measures

*Third parties can request information from the
enterprise on how it addresses identified actual and
potential adverse impacts*

Swiss Child Labor Due Diligence Requirements

Issues Addressed

- Conflict minerals
- Child labor

Subject Enterprises

Registered office, central administration, or principal place of business in Switzerland and any two of the following for the last two fiscal years:

- Total assets of CHF 20 million
- Sales of CHF 40 million
- 250 FTEs average annually
- Compliance begins January 1, 2023



Due Diligence

- Subject enterprises are required to conduct due diligence in respect of conflict minerals and child labor risks
 - Includes putting in place an adequate management system that includes a supply chain policy and a system for tracking the supply chain
 - Also required to determine and evaluate the risk of adverse impacts in the supply chain, prepare a risk management plan and take appropriate measures to mitigate
- Compliance with conflict minerals due diligence requirements will be required to be verified by an independent external expert

Reporting

- Subject enterprises will be required to annually report on due diligence

Penalties

- Violations of reporting and record-keeping obligations: Up to SFr 100,000

U.S. Climate-Risk Disclosure

Key Components

- Oversight and management of climate risk
- Impacts of climate-related risks on the business, financials, strategy, business model and outlook over the short-, medium- and long-term
- Processes for identifying, assessing, and managing climate-related risks
- Historical greenhouse gas emissions data (Scopes 1 and 2 and in many cases Scope 3), with third-party assurance
- Climate-related targets and goals, if set
- Financial statement disclosure on the financial impacts of physical and transition risks

US Securities and Exchange Commission

- Proposed March 21, 2022
- Compliance proposed starting FY2023
- Currently in comment period

Applicable to public companies

EU Corporate Sustainability Due Diligence Directive

Scope

- Adverse human rights and environmental impacts in own operations, at subsidiaries and at established direct or indirect business relationships in the value chain

Due Diligence Requirements

- Integrate due diligence into policies
- Identify adverse impacts
- Prevent and mitigate potential adverse impacts
- Minimize and end actual adverse impacts
- Complaints procedure
- Monitor effectiveness of due diligence policy and measures taken
- Publicly communicate on due diligence

Due diligence generally aligned with the U.N. Guiding Principles and OECD Guidelines for Multinational Enterprises

Subject Companies

EU companies: 500 employees average and €150 million worldwide turnover, or 250 employees average and €40 million worldwide turnover and 50% of the turnover generated in specified high-impact sectors

Non-EU companies: €150 million of EU turnover, or €40 million of EU turnover and 50% of worldwide turnover from a high-impact sector

***13,000 EU companies and
4,000 third-country companies will be subject***

Timing

Member States would have 2 years to transpose the directive into national law

Compliance would begin no earlier than 2024

COMPLIANCE & ESG



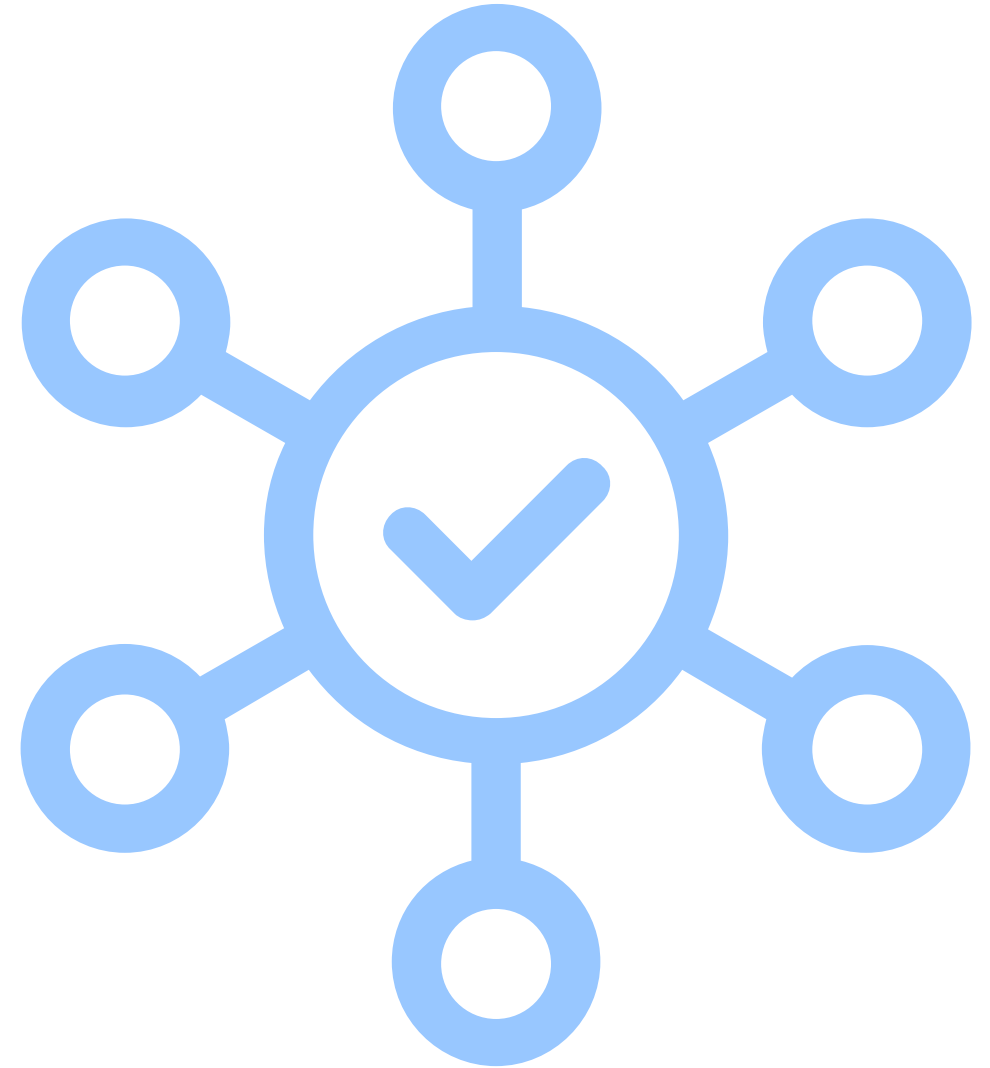
Compliance Trends – Conflict Minerals, Year 9

- Pushing for higher response rates (evaluate binary vs. spend coverage)
- Supplier's response rate and quality of data; better data – product level or user defined
- More stringent customer requirements tied to broader requests
- Emphasis on blind spots and escalating non-compliant / non-responsive
- Collecting more information in onboarding and contracting
- Due diligence during acquisitions – enhanced transparency
- Integration with ESG efforts



Compliance Best Practices – Conflict Minerals

- Better scoping and refocused efforts – not “same as last year!”
- Incorporate conflict minerals compliance into real business
 - Supplier meetings / onboarding, update contract and purchase order language, escalations
 - Distributors and contract manufacturers
- Address / Measure / Remediate OFAC and “High Risk” Smelters
- IPSA for declarations



Compliance Trends – Cobalt

- Primarily used in lithium-ion batteries and alloys
- Human rights violations and environmental implications – Amnesty International
- No mandatory regulation in place currently; however, there is an increased focus on this area
- DRC is largest producer – up to 30%
- RMI developed Cobalt Reporting Template (CRT) to be replaced with the Extended Minerals Reporting Template (EMRT) beginning of 2022

<http://www.responsiblemineralsinitiative.org/reporting-templates/emrt/>

- RMI partnered with Global Battery Alliance (GBA) on the Cobalt Action Partnership to end child labor and human rights violations and contribute to a sustainable cobalt supply chain

<http://www.responsiblemineralsinitiative.org/media/docs/GBA%20Cobalt%20Action%20Partnership%20Overview%20Sept%202020.pdf>

- Manufacturers evaluating cobalt-free batteries (Samsung, Tesla)

Compliance Trends – Other Minerals

Extended Minerals Reporting

- EMRT:
<http://www.responsiblemineralsinitiative.org/reporting-templates/emrt/>
- Due diligence reporting template for cobalt and mica (with additional minerals to follow in coming years)
- Update coming Fall 2022

Other Minerals/Materials of Concern

- Mica: Cosmetics, electrical appliances, tires, drywall, etc.
- Aluminum, Copper
 - Aluminum: <https://international-aluminium.org/>, <https://aluminium-stewardship.org/>
 - Copper: <https://copperalliance.org/>
- Responsible Steel: <https://www.responsiblesteel.org/>
 - “Our mission is to maximize steel’s contribution to a sustainable society.”
 - “The world’s largest materials industry, steel generates a turnover of 1 trillion US dollars and is 10 times larger than the aluminum industry, 7½ times larger than the copper industry and 4 times that of the cement industry.”

Emerging Topics – Chemical Compliance

TSCA

- On March 3, 2022, the EPA released a Pre-Published Final Rule amending its compliance guidelines and enforcement dates for PIP(3:1)
 - Extended the compliance date for manufacturers, processors, and distributors for PIP (3:1), or articles containing PIP (3:1) until October 21, 2024

<https://www.epa.gov/tsca-inventory>

Update – AHT-STRT Resource

The Slavery & Trafficking Risk Template (STRT)

“The Social Responsibility Alliance (SRA) is an initiative focused on providing companies with the open-source tools, resources, and support they need to build socially responsible supply chains through the collection of responsible sourcing data.

The initiative seeks to more broadly facilitate the collection of human and labour rights data to spark change in global supply chains and improve the lives of those impacted by human rights violations.”

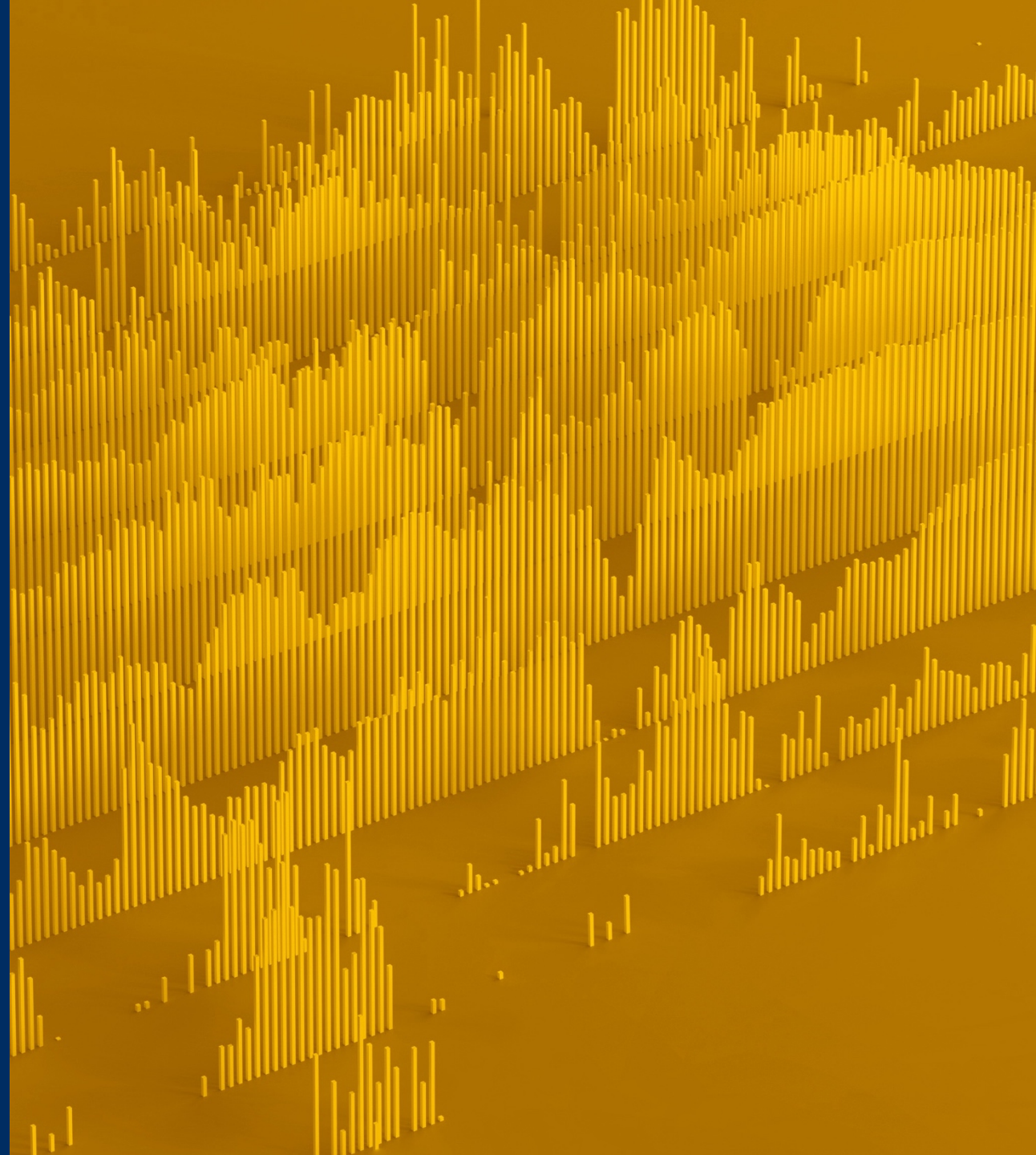
<https://www.socialresponsibilityalliance.org/>

Trends and Observations

- Proliferation of regulations across topics and geographies
- Increased requests for data and transparency

Key Needs:

1. Proactive education and updates on evolving regulations
2. Enhanced internal communication and coordination
3. Customer inquiries must be captured and addressed
4. Plan ahead for geographic expansion, M&A, product and sourcing changes to assess for impact



Key Steps for ESG Progress

ESG emphasis

- Driving more surveys, compliance documentation, supplier scorecard metrics
- May impact compliance goals and reporting for CM, AHT, etc.
- Creates an opportunity to elevate / integrate programs
- Data validation / controls / *attestation*

Helpful Actions:

Form a broadly inclusive multi-disciplinary steering committee:

- Legal, compliance, supply chain, finance, IT, investor relations
- Don't forget! Internal audit

Existing programs – Inventory and Evaluate in light of ESG

- Programs, Processes, Controls, Goals
- Consistent reporting

ESG – Pulling It All Together



Additional Resources

<https://www.crowe.com/insights/issues/esg-strategy>

<https://www.crowe.com/insights/assets/sec-proposes-climate-related-disclosures-a-closer-look>

<https://www.ropesgray.com/en/biographies/l/michael-littenberg>

About



Christopher McClure
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Licenses and Certifications

- Certified Public Accountant (CPA) IL and TX
- Certified Fraud Examiner (CFE)
- Certified in Financial Forensics (CFF)

Education

- M.B.A. - Kellogg School of Management at Northwestern University
- Bachelor of Science Accounting/Finance Trinity University

Christopher is a Partner with Crowe LLP, a member of a global accounting and consulting firm. He assists companies and their counsel in dealing with compliance and investigations. Christopher has significant experience dealing with SEC, EPA, and other regulatory issues.

Christopher leads efforts at Crowe to assist clients with ESG and reporting requirements. He is a frequent speaker on the subject, most recently at the AIAG Conflict Minerals Meeting, CFSI Annual Workshop, AIAG Conflict Minerals Symposium, National Association of Corporate Directors, and through the Practicing Law Institute.

Christopher works with a wide variety of manufacturers to design and implement comprehensive compliance programs related to Conflict Minerals, Anti-Human Trafficking, Fraud Prevention and Anti-Bribery, and other regulatory requirements.

About



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Michael is the global head of the firm's ESG, CSR & Business and Human Rights compliance practice. As part of his practice, for more than 30 years, Michael has been active in advising leading public and private companies on ESG, CSR and business and human rights matters, and he is widely viewed as one of the leading practitioners in this emerging area.

Michael advises clients on, among other things:

- Compliance with a wide range of enacted, pending, and proposed regulatory requirements; “soft law” instruments; and industry and NGO codes of conduct, standards, frameworks and guidance
- Due diligence
- Risk and impact assessments
- Structuring and implementation of tailored compliance policies, procedures, programs and codes of conduct
- Public benefit corporations
- Impact investing
- Training
- Benchmarking
- Regulatory and voluntary disclosures and other communications
- Stakeholder engagement
- Grievance mechanisms



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Thank you

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