



Formerly the
Conflict-Free Sourcing Initiative

Five Practical Steps for Conflict Minerals Due Diligence and SEC Disclosure

**White Paper
Version 3.0
April 2017**



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i. Abbreviations



3T	tantalum, tin, and tungsten
3TG	tantalum, tin, tungsten, and gold
BSP	Better Sourcing Program
CAHRA	Conflict-Affected and High-Risk Area
CFSI	Conflict-Free Sourcing Initiative
CFSP	Conflict-Free Smelter Program
CMR	Conflict Minerals Report
CMRT	Conflict Minerals Reporting Template
CSR	Corporate Social Responsibility
DRC	Democratic Republic of the Congo
EHS	Environmental Health and Safety
EU	European Union
ICGLR	International Conference on the Great Lakes Region
IPSA	Independent Private Sector Audit
iTSCi	ITRI Tin Supply Chain Initiative
LBMA	London Bullion Market Association
NGO	Non-Governmental Organization
OECD	Organisation for Economic Co-operation and Development
RCOI	Reasonable Country of Origin Inquiry
RJC	Responsible Jewellery Council
RMI	Responsible Minerals Initiative
SEC	United States Securities and Exchange Commission
SOR(s)	Smelter(s) or Refiner(s)
UN	United Nations
UN GoE	United Nations Group of Experts

ii. About the Responsible Minerals Initiative



The Responsible Minerals Initiative (RMI) – formerly the Conflict-Free Sourcing Initiative (CFSI) – was founded in 2008 by leading electronics companies to help them make informed choices about 3TG conflict-free sourcing in their supply chains. The RMI equips companies with tools and resources that improve regulatory compliance and support responsible sourcing from conflict-affected and high-risk areas. More than 360 companies and associations from seven different industries are part of the RMI today, and the initiative collaborates with other relevant programs focused on responsible sourcing.¹

Examples of RMI's tools and resources include white papers and best practices guidelines on tin, tantalum, tungsten, and gold (3TG) sourcing and reporting, a 3TG reporting template that helps downstream companies gather necessary information, and a voluntary independent third-party audit program for smelters and refiners (SORs), called the Conflict-Free Smelter Program (CFSP), that identifies countries of origin for mineral sourcing and helps companies achieve responsible sourcing of 3TG.^{2,3}

The CFSP protocols were developed by the RMI with multi-stakeholder input to be consistent with the Organisation for Economic Co-operation and Development (OECD)'s Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas (CAHRAs) (OECD Guidance)⁴.

The CFSP is not a certification program and participation is voluntary. Companies that source from SORs that have been found to be CFSP compliant are not considered automatically in compliance with the United States Securities and Exchange Commission (SEC) Final Rule.⁵ However, by sourcing from CFSP-compliant SORs, companies can go a long way toward meeting SEC requirements.

¹ www.responsiblemineralsinitiative.org

² In 2012, the RMI (then the CFSI), the London Bullion Market Association (LBMA), and the Responsible Jewellery Council (RJC) announced mutual cross-recognition of independent, third party gold refiner audits, in order to reduce duplication for refiners, to support their efforts in implementing the OECD Due Diligence Guidance and complying with the responsible sourcing legislation.

³ The conflict-free smelter list is available at <http://www.responsiblemineralsinitiative.org/conflict-free-smelter-refiner-lists/>

⁴ Full text available at: <http://www.oecd.org/fr/daf/inv/mne/mining.htm>

⁵ Full text available at: <http://www.sec.gov/rules/final/2012/34-67716.pdf>

I. Introduction

A. Background



Profits from conflict minerals⁶ found in the Democratic Republic of the Congo (DRC) have supported conflict, human rights violations, and labor and environmental abuses in the region for years. Companies that use these minerals in the design and manufacture of their products and components are concerned about these abuses, and are taking action to avoid contributing to conflict in any way, while encouraging responsible sourcing from the region.

Working together, downstream companies⁷ have developed a variety of policies and processes to better understand the risks associated with minerals to facilitate decision-making that supports responsible sourcing. Companies' actions alone cannot ensure security, improve governance, or bring about peace in the region. Responsible sourcing requires efforts from all stakeholders: governments, private companies, industry associations, non-governmental entities, and civil society to secure and stabilize CAHRAs worldwide. While companies cannot address all causes of conflict and human rights issues, due diligence frameworks help them manage risks that link minerals and conflict.

B. Purpose

The purpose of this white paper is to:

- Provide practical guidance for downstream companies that have United States Securities and Exchange Commission (SEC) disclosure obligations for conflict minerals.
- Provide guidance for those companies that would like to implement recognized progressive practices in their responsible sourcing programs.
- Provides guidance on what information companies can include in their conflict minerals disclosures.

⁶ As defined in 2010 United States legislation, Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 1502(e)(4):

"CONFLICT MINERAL.—The term "conflict mineral" means—

(A) columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives; or

(B) any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country."

Full text available at: <http://www.gpo.gov/fdsys/pkg/BILLS-111hr4173enr/pdf/BILLS-111hr4173enr.pdf>. This paper will refer to "conflict minerals" as simply "3TG".

⁷ As defined in the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict Affected and High-Risk Areas 3rd edition: "Downstream" means the minerals supply chain from smelters/refiners to retailers.

"Downstream companies" include metal traders and exchanges, component manufacturers, product manufacturers, original equipment manufacturers (OEMs) and retailers.

- Clarify expectations for suppliers to companies that must comply with the United States Securities and Exchange Commission Final Rule on compliance with the Dodd-Frank Act (SEC Final Rule)⁸.



This paper gives examples of how a company may use the OECD Guidance to meet SEC requirements by correlating the OECD Guidance 5-Step process to the SEC 3-Step process. This paper is not a set of rules or a method for compliance with responsible sourcing legislation. Instead, this paper seeks to provide clear explanations, practical tips and recognized progressive practices for companies on collecting and assessing information about the 3TG in their supply chain that should inform company decision-making and public reporting. The progressive practices could be used by companies as they develop, review, or revise their responsible sourcing programs or SEC filings. It is up to each individual company to determine if any of the options are appropriate for their organization.

By sharing these practices, the RMI hopes more companies will adopt similar practices, thus making responsible sourcing more efficient and ultimately more effective at mitigating conflict and other serious human rights abuses. These practices are meant as examples only and in no way constrain other practices that may be employed to responsibly source 3TG. We recommend that downstream companies use the tools and information provided by the RMI, and other related programs, in conjunction with the due diligence framework set out in the OECD Guidance to help them meet legislative requirements and international guidance.

Specifically, this paper supports public reporting related to the following sources: The United States Dodd-Frank Wall Street Reform and Consumer Protection Act⁹ of 2010 (Dodd-Frank Act); the related SEC Final Rule; and the OECD Guidance¹⁰. Future reporting obligations that may be required by the European Union (EU) or other jurisdictions are included at the end of this white paper, in Section VII.

C. Intended Audiences

Several groups of stakeholders could find this resource helpful. The RMI has prepared this document with the following groups in mind.

SEC-regulated companies: Companies that trade publicly in the United States are subject to the SEC Rule. This white paper could be useful to:

- Company internal conflict minerals practice teams

⁸ Full text available at: <http://www.sec.gov/rules/final/2012/34-67716.pdf>

⁹ Full text available at: <http://www.gpo.gov/fdsys/pkg/BILLS-111hr4173enr/pdf/BILLS-111hr4173enr.pdf>

¹⁰ Full text available at: <http://www.oecd.org/fr/daf/inv/mne/mining.htm>

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- Employees in various business functions that play a supporting role in conflict minerals programs
- People assuming new roles or responsibilities in conflict minerals programs
- Vendors, suppliers, customers, or other key stakeholders



Non-filing companies: The SEC Conflict Minerals rule has affected many companies that are not subject to SEC rules – notably, private or non-U.S. companies that are in the supply chain of regulated companies.

Other companies: Some companies that are neither regulated nor affected by the SEC Conflict Minerals Rule may find the information herein useful in developing supply chain risk management policies, programs or practices. Other companies may use this model to achieve elective business goals and objectives that are similar to those imposed by the Dodd-Frank Act.

D. Disclaimers

Both the OECD Guidance and the SEC Final Rule on conflict minerals recognize that a company's processes must be tailored to the facts and circumstances of the individual enterprise, taking into account size, complexity and supply chain characteristics. Thus, each downstream company must make its own judgment whether, based on its circumstances, conformance to this or any other set of practices satisfies its obligations under the SEC requirements or to meet elective business goals and objectives. Regardless of whether collective industry approaches are utilized, the responsibility for due diligence remains the responsibility of each company.

Customer needs for information about SORs in the multi-level supply chain will require companies to participate in sharing SOR data. SEC-filing companies cannot provide visibility to 3TG sourcing practices in their supply chains without the help of the non-SEC filing supplier companies. Companies should always refer to the official texts of the SEC Final Rule and the OECD Guidance, as appropriate, for full details on the requirements and/or recommendations contained therein.

No part of this document constitutes legal advice, and the choice to use any part of this document is voluntary and made at the user's sole discretion. References in this white paper to "DRC conflict-free" means the minerals do not directly or indirectly finance or benefit armed groups in Covered Countries as defined in the Dodd-Frank Act¹¹.

¹¹ An adjoining country is defined as a country that shares an internationally recognized border with the Democratic Republic of the Congo. There are nine of these countries: Angola, Burundi, Central Africa Republic, Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia. The adjoining countries plus the DRC are altogether called "Covered Countries" in Dodd-Frank.

E. SEC and OECD Frameworks



The SEC Final Rule embodies a three-step approach to Dodd-Frank Act compliance: the first step is determining applicability of the rule; the second step is conducting a “reasonable country of origin inquiry” (“RCOI”) to determine whether there is reason to believe that conflict minerals from a Covered Country are present in a company’s products; and, if so, the third step is conducting due diligence to determine the source and origin of those conflict minerals and the facility’s Smelters or Refiners (SORs) in which they were processed. Companies requiring due diligence must use a nationally or internationally recognized standard, such as the OECD Guidance to meet their compliance and reporting obligations.

The OECD Guidance applies to all companies in the mineral supply chain (miners, smelters, manufacturers, and retailers) and provides recommendations to help companies respect human rights and avoid contributing to conflict through their sourcing decisions, including the choice of their suppliers. The OECD Guidance recommends that downstream companies introduce a supply chain transparency system that allows the identification of the smelters/refiners in the company’s mineral supply chain¹². Downstream companies should identify the risks in their supply chain by assessing the due diligence practices of their smelters/refiners against the OECD Guidance¹³.

Given their place in the supply chain, downstream companies with no direct relationships with a SOR typically do not possess an independent means of determining the source and origin of 3TG processed by SORs. Accordingly, downstream companies may coordinate efforts through industry-wide initiatives¹⁴ to build leverage over sub-suppliers, overcome practical challenges, and effectively discharge the due diligence recommendations contained in the OECD Guidance.

This paper provides examples of how a downstream company may use the relevant parts of the OECD Guidance to meet its SEC compliance and reporting requirements by correlating the OECD Guidance steps to the SEC compliance steps needed to meet U.S. reporting requirements. As a result, it is organized along the lines of the 5-steps of the OECD Guidance¹⁵ and elaborates on which processes described at each step apply to the SEC Final Rule.

¹² See Step 1C.5. (Supplement on Tin, Tantalum and Tungsten) and Step 1 Section I C and Step 1 Section II E (Supplement on Gold) of the OECD Guidance

¹³ See Step 2, Section II Downstream Companies (Supplement on Tin, Tantalum and Tungsten) of the OECD Guidance

¹⁴ Per the OECD Guidance, the term “industry program” means an initiative or program created and managed by an industry organization or similar industry initiative to support and advance some or all of the recommendations of the OECD Guidance. An Industry Program may be a part of the organization’s broader activities that encompass other goals.

¹⁵ OECD mineral specific supplements can be found within the OECD Guidance document.



The OECD Guidance recommends flexibility in the application of due diligence, recognizing that many downstream companies are typically several tiers removed from SORs and, when acting individually, these downstream companies have little visibility beyond their direct supplier to companies in the upstream supply chain such, as SORs and the mine of origin. The nature and extent of due diligence can be affected by factors such as the size of the company, the location of activities, the situation in a particular country, the sector, and the nature of products and services involved. The OECD Guidance recommends that challenges be met in a variety of ways, including through industry-wide cooperation¹⁶.

The OECD Guidance was written with the intent of defining a process for conducting due diligence and allowing for continuous improvement. This paper emphasizes areas where continuous improvement (year-over-year progress) can be identified, encouraged, and reported.

Reporting obligations required by the European Union (EU) or other jurisdictions are included at the end of this white paper, in Section VII.

II. OECD Step 1: Establish Strong Company Management Systems

The SEC's Final Rule on Section 1502 published in August 2012 recognizes the OECD Guidance as an international framework available to companies to perform due diligence for responsible mineral sourcing and to help them meet their reporting obligations under the Dodd-Frank Act. The SEC indicates that the OECD Guidance "satisfies our criteria and may be used as a framework for purposes of satisfying the final rule's requirement that an issuer exercise due diligence in determining the source and chain of custody of its conflict minerals." The SEC Rule notes that the OECD Guidance is currently the only internationally available due diligence framework, and thus the OECD Guidance is applicable to issuers under the SEC's Rules.

This section describes how companies may want to structure their supply chain transparency programs through a five-step process. It includes elements outlined in the OECD Guidance. Step 1 will help companies establish the frameworks they need to implement their conflict minerals programs. Step 2 is about identifying and assessing risks in the supply chain. Step 3 describes designing and implementing a strategy to respond to or mitigate those risks. Step 4 asks companies to conduct an independent third-party audit on the SORs in their supply chain or participate in an

¹⁶ For a fuller description of tailored approaches, please refer to the Introduction of the OECD Guidance, p. 15 "Who should carry out due diligence?"

industry program that audits SORs' due diligence practices. Step 5 is a public reporting provision.

A. OECD Step 1: Establish Strong Company Management Systems



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The first step the OECD Guidance recommends for all companies, including downstream companies, is to establish management systems to support the execution of a company-wide minerals due diligence program that operates effectively and efficiently. Companies' management systems should identify and address risks associated with minerals from CAHRAs. To help companies meet their requirements for compliance with the SEC Final Rule, this document specifically discusses the OECD Guidance as it applies to the Covered Countries (SEC requirements), although the OECD Guidance applies to sourcing from CAHRAs globally.

The following elements of a management system are recommended by the OECD Guidance¹⁷ for downstream companies:

Step 1A. Adopt and commit to a supply chain policy for a responsible global supply chain of minerals from Conflict-Affected and High-Risk Areas (CAHRA).

A company's supply chain policy may establish and communicate conflict minerals goals that are reasonable and achievable. This policy thus forms the expectations to which the company holds itself and its supply chain accountable. A company need not specifically use the terms "policy" or "conflict minerals policy" to designate its principles, provided that the company makes clear its guiding principles for dealing with the issue. A company may consider the OECD Guidance model policy (OECD Guidance Annex II) where there are detailed definitions of abusive practices that contribute to conflict and serious human rights abuses. The OECD's model policy also covers topics beyond the scope of the SEC rule and direct action to mitigate the referenced issues.

A company policy on responsible minerals may include one or more of the following:

- Principles regarding the use of 3TG from CAHRAs.
- Intent to support responsible sourcing from the Covered Countries.
- Communication of the company's conflict minerals program goal(s) (e.g., DRC conflict-free, responsible in-region sourcing, and preference for CFSP-compliant SORs).
- Actions that the company will take to support its policy and goals.
- Broad expectations of its relevant suppliers to support the company's goals.
- Expectations that the SORs in its supply chain will be validated as conflict-free.

¹⁷ Downstream companies should refer to the OECD Guidance for a full description of the detailed recommendations to downstream companies.



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Reasonable Country of Origin Inquiry (RCOI) and possibly the due diligence practices that the company will employ to implement its policy may be contained in the policy itself. These elements also may be found in a separate document, such as implementing guidelines or standard operating procedures, as may be consistent with the company's normal practice.

The policy may be shared publicly, such as by posting on a company website. The policy also may be communicated to its relevant suppliers by appropriate measures, such as contracts, to outline company goals and high-level supplier expectations.

The policy may form the basis for creating a conflict minerals management system and may be included in the SEC Disclosure as part of the Conflict Minerals Report (CMR).

Step 1B. Structure internal management systems to support supply chain due diligence.

The company should assemble an internal team from functional areas that may include engineering; design; finance; IT; procurement; quality; communications; legal; and/or Environmental, Health and Safety (EHS) to develop a conflict minerals program that implements the policy and oversees the company's program. This team also should have senior management support. It may be effective to incorporate concepts from other corporate management system processes such as human rights policies, human resources procedures, supplier assessment guidelines, and supplier KPI/scorecard criteria to provide the necessary structure to support the creation, implementation and monitoring of an effective conflict minerals program. The internal team should be assigned the necessary authority and resources to establish an effective organizational structure and communication process to ensure execution of the company policy.

The internal team may be tasked with the following responsibilities:

- Establish an organizational framework to meet the expectations set forth in the policy. The framework and policy should be complementary and aligned to enable execution.
- Establish communication processes that will ensure critical information, including the company policy, reaches relevant employees and suppliers.
- Create a company-specific conflict minerals implementation plan. The plan should integrate the company's chosen nationally or internationally recognized due diligence guidance.
- Implement the plan, including evaluating risks and implementing risk mitigation measures for identified risks.
- Evaluate the progress, effectiveness and execution of the policy and implementation plan.

- Periodically communicate program status and effectiveness to senior management.
- Develop the material that will be publicly reported and/or submitted to the SEC.

Step 1C. Establish a system of controls and transparency over the conflict minerals supply chain.



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Downstream companies should establish systems of controls and transparency over minerals supply chains. This can be achieved by creating a process to engage relevant first-tier suppliers and request information, including information gathered by those suppliers about the SORs identified in their own supply chains.¹⁸

OECD Guidance recommends that downstream companies focus their efforts on identifying “*SORs in the company’s mineral supply chain through which the following information on the supply chain of minerals from ‘red flag locations of mineral origin and transit’ should be obtained: the identification of all countries of origin, transport and transit for the minerals in the supply chains of each SOR. Companies which, due to their size or other factors, may find it difficult to identify actors upstream from their direct suppliers may engage and actively cooperate with industry members with whom they share suppliers or downstream companies with whom they have a business relationship to identify which smelters are in the supply chain.*”¹⁹

Downstream companies also may establish additional controls and transparency to request or assess information from beyond their direct suppliers, including relevant third-party programs, other monitoring sources, or through direct engagement with upstream supply chain actors. The goal of the control and transparency system is to collect and retain the necessary information supportive of the company’s implementation framework, as well as to provide information necessary to meet legal reporting requirements.

Companies may find it helpful to store relevant records in an electronic database. Information gathering systems should be capable of maintaining related records in accordance with the company’s specific records retention policy, or for a minimum period as required by law. OECD Guidance specifically suggests maintaining records for a minimum of five years and preferably in a computerized database.²⁰

Step 1D. Strengthen engagement with relevant suppliers.

The OECD Guidance recommends that companies should ensure suppliers commit to a supply chain policy consistent with Annex II and the due diligence processes as recommended in the OECD Guidance.

¹⁸ See OECD Guidance Step 1C for further information: <http://www.oecd.org/daf/inv/mne/mining.htm>.

¹⁹ See Step 1 C5 of the OECD Guidance, pp. 39

²⁰ pp. 39

Downstream companies should enlist the support of their relevant direct suppliers (with whom they have a business relationship) in executing conflict minerals programs. The OECD Guidance specifically states a company should:



1. Establish, where practicable, long-term relationships with suppliers as opposed to short-term or one-off contracts in order to build leverage over suppliers.
2. Communicate to suppliers their expectations on responsible supply chains of minerals from CAHRAs, and incorporate the supply chain policy and due diligence processes set out in this Guidance into commercial contracts and/or written agreements with suppliers which can be applied and monitored, including, if deemed necessary, the right to conduct unannounced spot-checks on suppliers and have access to their documentation.
3. Consider ways to support and build capabilities of suppliers to improve performance and conform to company supply chain policy.
4. Commit to designing measurable improvement plans with suppliers with the involvement, if relevant and where appropriate, of local and central governments, international organizations and civil society when pursuing risk mitigation.²¹

Due to the complexity and dynamic nature of supply chains and to avoid unnecessary disruption, companies should avoid contract language requiring a guarantee/certification that their suppliers do not use 3TG that benefited armed groups, as well as seeking liability and product recall indemnity in conjunction with such a guarantee. In some cases, a supplier may use processes similar to those employed by its customer with respect to the creation of a supply chain policy and implementation plan. Capacity-building through means such as seminars and distribution of reference materials are recommended to help relevant suppliers and SORs improve performance and enable them to comply with the OECD Guidance related to upstream companies. This may assist suppliers in meeting their own legal reporting requirements while supporting their customers' expectations. Relevant supplier engagement is necessary to enable the execution of OECD Guidance Step 2 (Identifying and Assessing Risks in the Supply Chain).

Companies should avoid contract language requiring a guarantee or certification that their suppliers do not use 3TG that directly or indirectly financed or benefited armed groups. SORs are "validated" as being conflict free at the time of an audit. For the purposes of the CFSP, neither the auditor nor any entity issues a "certificate" or conducts a "certification" of the supply chain. Conflict minerals audits are a review of policies, management practices, and evidence of implementation at a point in time and do not offer a "100 percent guarantee." Companies should avoid seeking liability or

²¹ OECD Guidance pp.40



product recall indemnity in conjunction with any supplier commitment or statement. Product or part-level chain of custody is exceedingly difficult. Excessive risk transfer to the supplier can have unintended consequences, such as the supplier's choice to avoid sourcing from the Covered Countries altogether, which is in direct conflict with the goals and objectives of the statute and stakeholders who are proponents of responsible sourcing from the Covered Countries.

Step 1E. Establish a company grievance mechanism

According to the OECD Guidance, companies may, depending on their position in the supply chain, institute an individual or a collaborative industry grievance mechanism to allow affected persons or whistleblowers to voice concerns. In the course of executing its implementation plan, a downstream company may provide a mechanism for concerned parties to provide information that may alert a company of risks or concerns regarding its supply chain. In such cases, it may be useful to provide any concerned party the opportunity to communicate its concerns regarding the accuracy of such information or additional relevant information that may not have been uncovered in the risk assessment process. The open reporting mechanism may be specific to the conflict minerals topic, or companies may extend the scope of their current open reporting systems to include conflict minerals. Examples include a company's ombudsman contact, supplier relationships, department contacts, or a company's ethics hotline. Due to a downstream company's location within the supply chain, it may be limited in its ability to verify the accuracy of risk information or directly respond to identified risks. In such cases, a collaborative industry grievance mechanism may be utilized to investigate and mitigate relevant supply chain risks.

Members of the RMI, SORs and other external stakeholders may utilize the RMI's Grievance and Complaints Mechanism.²² The RMI's Grievance Mechanism allows stakeholders to raise concerns about the RMI, CFSP audit program, protocols, and SOR operations that fall within the scope of the CFSP, audit quality, and auditor competencies, mineral supply chains and upstream/downstream initiatives, as well as mineral sourcing activities and due diligence of RMI member companies. Starting in 2017, quarterly summaries of grievances and complaints tracked by the RMI are provided to RMI members, while high-level summaries are provided to the public on an annual basis. The London Bullion Market Association (LBMA)²³ and Responsible Jewellery Council (RJC)²⁴ also have public grievance processes that can be utilized for gold supply chains.

B. Relationship to SEC Requirements

²² <http://www.responsiblemineralsinitiative.org/conflict-free-smelter-program/grievances-and-complaints-mechanism/>

²³ <http://www.lbma.org.uk/>

²⁴ <http://www.responsiblejewellery.com/contact-us/rjc-complaints-mechanism/>



The SEC Final Rule does not set out requirements for how a company should organize itself internally in support of conflict minerals program implementation. Nevertheless, it may be appropriate for a company to align its conflict minerals program implementation process with OECD Guidance Step 1, since doing so enables the company to implement a conflict minerals management system that conforms to an internationally recognized framework.

C. Progressive Practices Options

The following elements have been identified as progressive practices to consider when developing and implementing your company management systems:

- Elements of conflict-free can be embedded into a broader supply chain policy consistent with the OECD Guidance.
- Expand internal controls to include elements of the supply chain beyond Tier 1/direct suppliers.
- Expand geographic scope of program to extend beyond the Covered Countries given the evolving regulatory landscape, and thus aligning with the OECD Guidance.
- Expand scope of program to other minerals consistent with the OECD Guidance, which is relevant to all minerals and not solely 3TG.
- Support extending digital information-sharing systems on suppliers, including SORs information along the supply chain.
- Incorporate expectations regarding suppliers' conflict minerals policies, processes and disclosure of relevant information into supplier contracts and other relevant documents.
- Actively pursue responsible sourcing from the Covered Countries and other CAHRAs to enable economic development in these areas, and promote stability and peace.
- Consider spot checks of the information provided by suppliers to assess their program and information they provide customers (e.g., desk review, site visits or audits).
- Develop a business process flow diagram that clearly delineates the sequence of steps, decision points, criteria for making decisions, and roles and responsibilities throughout the process.

III. OECD Step 2: Explore Risks in the Supply Chain

This section describes practices that comprise reasonable design and good faith execution of a Reasonable Country of Origin Inquiry (RCOI) as set out in the SEC Final Rule, using Step 2 of the OECD Guidance framework as a guide. As noted in the



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introduction, each step of the OECD Guidance must be considered in the specific context of a downstream company.

“Risks” are defined in relation to the potentially adverse impacts of a company’s operations, which result from a company’s own activities or its relationships with third parties, including suppliers and other entities in the supply chain. Adverse impacts may include harm to people (i.e., external impacts), or reputational damage or legal liability for the company (i.e., internal impacts), or both. Such internal and external impacts are often interdependent, with external harm coupled with reputational damage or exposure to legal liability.²⁵

“Risk mitigation” includes the steps the organization can take to reduce risk; mitigation measures can reduce the likelihood or the impact of an occurrence – or both.

The “risk” that drives the OECD Guidance is the risk that companies procuring 3TG will (knowingly or unknowingly) purchase minerals that have been mined, transported, or traded in ways that have provided funds to non-state armed groups – that, in turn, have used these funds to commit human rights abuses. The SEC Rule aims to reduce the “risk” that products of publicly-traded companies in the U.S. do not contain 3TG that directly or indirectly financed or benefited armed groups in the Covered Countries.

A. OECD Step 2: Identify and Assess Risks in the Supply Chain

OECD Guidance Step 2 outlines elements that are intended to be covered by all companies. To help companies, the OECD Guidance provides specific and separate recommendations for downstream companies.²⁶ Nevertheless, some of the steps specified for downstream companies are more relevant to downstream companies that have a direct relationship with SORs as compared with companies further removed from SORs in the supply chain. As such, the OECD recommends that these companies engage and actively cooperate with other industry peers to implement OECD Step 2.²⁷

In summary, downstream companies should:²⁸

- Identify “to the best of their efforts” SORs in their supply chain.
- Engage with SORs to obtain information about the country of mineral origin, transit and transportation routes used between the mine and SORs.²⁹

²⁵ See OECD Guidance page 13

²⁶ See Section II of Step 2 of the OECD Guidance, which are recommendations to downstream companies.

²⁷ See OECD Guidance Step2 Section II p. 42.

²⁸ See OECD Guidance pp. 42 for full text.

²⁹ Independent third-party audit programs (e.g., CFSP, LBMA, and RJC) currently provide some or all of this information. As recommended by the OECD Guidance, companies may draw on the information provided by industry-wide schemes to help them fulfill relevant recommendations. Companies utilizing information from industry-wide



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- Assess whether SORs have carried out all elements of due diligence for responsible supply chains of minerals from CAHRAs.³⁰
- Where necessary, carry out, including through participation in industry programs, joint spot checks at the SORs' own facilities.

These activities can be conducted through engaging industry programs, as downstream companies may not be able to obtain mine of origin or transit routes, to assess whether SORs have carried out all elements of the OECD Guidance or to carry out spot checks with respect to SORs with which they do not have business relationships. To clarify practical steps that are relevant to downstream companies more than one tier removed from SORs, this guide considered, as a starting point, the "practical common steps" provided by the downstream Tin, Tantalum and Tungsten (3T) OECD Guidance pilot participants, which were incorporated into the OECD's report of the pilot program³¹.

Another important distinction between the OECD Guidance responsibilities of upstream and downstream companies is in how risk is defined and the appropriate elements of risk identification that are implied by the document. The focus of risk identification within the OECD Guidance is the identification of "red flag" triggers that exclusively are upstream of the SOR. Therefore, risk identification for a downstream actor is relevant when a SOR has been identified by a credible third party, including the CFSP and the United Nation Group of Experts (UN GoE), to source minerals that directly or indirectly supported armed groups.

The OECD Guidance describes a process for sharing and assessing information. The focus is on implementing a process rather than accomplishing a specific result. This strategy is also very relevant to downstream companies that are several tiers of suppliers removed from SORs. In practicality, this means that a downstream company applies a process and expectation that flows through the supply chain. As such, downstream companies need to engage with Tier 1 suppliers with which they have a business relationship to obtain information from sub-suppliers and sub-sub-suppliers to which the downstream actor has no direct access. Downstream companies may include supplier training and spot checks on their suppliers to help improve their supply chain's performance.

B. Practical Interpretation of OECD Guidance Step 2 for Downstream Companies

schemes should be informed for how the schemes collect, assess, and report information related to 3TG mine of origin, transit routes, and implementation of SOR due diligence. Additional recommendations on OECD Defined Roles for Downstream Companies are discussed in Section V.A.3. below.

³⁰ Ibid.

³¹ <https://www.oecd.org/daf/inv/investmentfordevelopment/DownstreamBaselineReport.pdf>



The discussion below is an attempt to interpret the OECD Guidance Step 2 sub-steps if a company were only to implement the OECD Guidance without the context of the SEC Rule.³² These sub-steps primarily follow the “practical common steps” provided by the downstream 3T OECD Guidance pilot participants.³³ The OECD Guidance also emphasizes how recommendations can be carried out individually or collectively, depending on the size of the company and its position in the supply chain. Members of the RMI have recognized this benefit and work collectively to develop tools, processes, training, awareness and outreach.

The facts and circumstances of different suppliers in a downstream actor’s supply chain should be considered based on materiality when prioritizing efforts. It can take many months or, in some cases, years of engagement and propagation of expectations through many tiers of the supply chain before the information returned to that downstream company could be considered accurate and complete. However, what is most important is not that the information is completed immediately, but that the completeness of information improves over time. This principle of progressive improvement is also a hallmark of the OECD Guidance.

Implementing the OECD Guidance steps is a journey that anticipates incremental improvements over time, rather than a direct path to a definitive endpoint, and acceptance of uncertainty. Due to the complexity and length of 3TG supply chains and other factors, it is possible that there may never be certainty of completeness or accuracy in information provided.

Lastly, as there are only a few hundred SORs of the 3Ts and around 100 large-volume gold refiners, companies with large supply chains are likely to see that all or a very substantial proportion of the total SOR population is being reported in their supply chains. At this point, there is limited value added by identifying which SORs are used by particular suppliers. The most effective strategy for such downstream companies therefore may be to concentrate efforts on those segments of their supply chains in which they have the greatest ability to encourage SORs to engage in an independent third-party audit program or to discontinue sourcing from SORs if they repeatedly refused to engage.

1. Identify relevant or highest priority first-tier suppliers.

Downstream companies may identify relevant or highest priority first-tier suppliers that supply products containing 3TG. A downstream company’s supply chain may be quite diverse; therefore, a company may employ the engagement approach and inquiry

³² The SEC Final Rule does not require elimination of conflict-supporting minerals from supply chains. The Rule requires that companies describe their Due Diligence activities in their SEC filings.

³³ For more on the Guidance pilot, see <http://www.oecd.org/daf/inv/mne/implementingtheguidance.htm>.

frequency as appropriate for the breadth and depth of its supply chain. Inquiries may be conducted annually or may include additional reviews based on such factors as significant changes in product line or supply base.

Companies may use any of the following methods to identify the relevant suppliers that contribute 3TG to their final products:



- Identify products that contain 3TG by reference to bills of materials or product composition data, or by qualitative or other reasonable means.
- Identify relevant purchased materials for those products.
- Identify suppliers of the relevant purchased materials.
- Prioritize relevant suppliers using relevant factors (e.g., geographic location, annual volume of 3TG contained, annual spend, proximity of first-tier supplier to SOR, and type of mineral).
- Consider representation and coverage across product lines and supplier categories.

2. Request information from relevant first-tier suppliers.

Downstream companies should request information from relevant suppliers to identify SORs in the supply chain (see Figure 1). This is a key recommendation to downstream companies from the OECD Guidance. This may be achieved by using industry data collection tools such as the RMI Conflict Minerals Reporting Template (CMRT),³⁴ or other IPC-compatible standards for data format. Some companies with large supply chains may choose to gather information from their suppliers using a contract flow-down approach following suppliers' consent, or to adopt a combination of the two methods. Companies may ask suppliers to pass down similar expectations to their sub-suppliers.

³⁴ Available at <http://www.conflictreesmelter.org/ConflictMineralsReportingTemplateDashboard.htm>.

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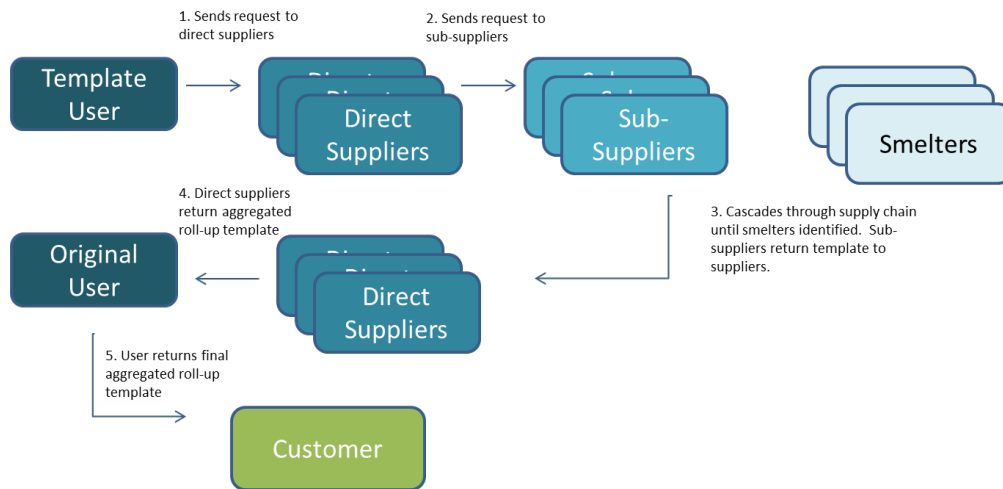


Figure 1 Downstream information flow

3. Review information provided by relevant first-tier suppliers.

Downstream companies may review information to assess the reasonableness of the representations their suppliers have made. Downstream companies can assess a supplier's responses to understand what steps the supplier is taking in conducting activities regarding 3TG and to understand which SOR facilities that process 3TG are present in the supplier's own supply chain.

Companies may use any of the following methods when reviewing supplier representations:

- Review information relative to the expectations established by the company (e.g., did the supplier adopt its own conflict minerals policy?).
- Review the responses for completeness.
- Review the response for reasonableness – that is, whether the response is consistent with the downstream company's knowledge of the supplier or its supply chain.
- Look for duplicate entries for the same entity.
- Compare the smelters and refiners provided to the most recent list published by the Department of Commerce
- Compare information with industry peers.
- Engage a vendor to compare information with data repositories or independent research they have conducted.



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Downstream companies may follow up with suppliers to provide feedback on what is acceptable and not acceptable with their representations.

Downstream companies may choose to focus on priority or strategic suppliers first, recognizing that obtaining adequate information from all suppliers could take years. The facts and circumstances of each downstream company's supply chain should be considered when prioritizing efforts. Again, when implementing the OECD Guidance steps, companies should consider their progress incremental in nature, rather than immediate.

Downstream companies may provide capacity building with relevant first-tier suppliers to improve responses. Individual companies, or groups of companies working through an industry association, may use any of the following methods for capacity building:

- Training the company or industry on expectations regarding conflict minerals.
- Providing industry tools (such as those provided by the RMI) and reference materials.
- Using a common database, such as the RMI's Smelter Database and Smelter Engagement Team.
- Communicating company policies regarding conflict minerals.

4. Compare SORs identified by the supply chain to assess possible risk.

Downstream companies should compare the names of the 3TG SORs identified in supplier representations to independently verified lists (e.g., the [RMI Compliant and Active Smelter Lists](#), the [London Bullion Market Association Responsible Gold Refiner list](#), or the [Responsible Jewellery Council Chain-of-Custody List of Certified Entities](#)).

Companies may also use other sources of information to assess potential risk, such as:

- Independent third-party audit report of the SOR, which evaluates the SOR's due diligence practice against OECD recommendations.
- A self-declaration from a direct communication with a SOR or its website.
- News articles, investment reports, reports published by reputable consulting firms or NGOs, and/or industry association information that may indicate where a SOR sources. For SORs not independently verified, geographic location or other information to determine the likelihood they are not sourcing minerals from a CAHRA.
- Available public reports including reports from the UN GoE on the Democratic Republic of the Congo³⁵, NGOs or other reputable sources to determine

³⁵ For more information on the UN Group of Experts, see <http://www.un.org/sc/committees/1533/egroup.shtml>.



whether a SOR is known to be sourcing from a CAHRA, or is located in a high-risk country suspected of processing conflict minerals from a CAHRA.

- Incident monitoring reports from third-party systems, e.g., Better Sourcing Program (BSP), ITRI Tin Supply Chain Initiative (iTSCi), and International Conference on the Great Lakes Region (ICGLR).
- Direct information that a company may have about a SOR regarding its sourcing practices.
- Department of Commerce information on metal processing facilities.

Additionally, industry associations may play a role in collecting, disseminating and/or reviewing risk information and reporting to membership.

C. Relationship to SEC Requirements

This section describes how implementation of and outputs from OECD Guidance Step 2 can be utilized to support compliance reporting under the SEC Final Rule.

An issuer is expected to conduct a reasonable country of origin inquiry (RCOI) to determine if there is reason to believe that conflict minerals necessary to the functionality or production of a product manufactured or contracted to be manufactured by an issuer may have originated in a Covered Country, including whether they may have come from recycled or scrap sources.

The RCOI involves determining if the company has reason to believe that SORs in its supply chain are sourcing minerals from a Covered Country. All the OECD Guidance steps described earlier could support a downstream company's RCOI. 100 percent certainty in RCOI and other due diligence processes is not required.³⁶

Specifically, RCOI information could be derived from reviewing information provided by a company's relevant first-tier suppliers:

- Representations from relevant suppliers could indicate the country and/or mine of origin associated with a SOR in that supplier's supply chain, which could indicate whether the facility sources from a Covered Country (this information may be included in the CMRT received from suppliers).
- Representations from relevant suppliers could indicate whether or not the SOR solely processes recycled or scrap materials.

Additionally, validated SOR RCOI information can be derived from the RMI for those SORs that have undergone a CFSP audit (this data is only available to RMI

³⁶ See SEC Final Rule, pp. 141



members).³⁷ Companies also may utilize other available sources of information to determine possible country of origin, including: completed CMRTs, SOR self-declarations, SOR conflict mineral policies, and industry or news reports.³⁸

Some members may choose to cross-reference information from multiple sources to confirm the accuracy of Country of Origin (COO) information. It is worth noting that the SEC does not require certainty but rather a reasonable process designed to yield reasonable results. Companies should also note that the country where a SOR is located does not reflect the country where minerals are sourced. Companies should make sure they distinguish between the location of the SOR and the COO of the minerals.

D. Progressive Practices Options

The following elements have been identified as progressive practices for companies to consider when developing and identifying risks in the supply chain:

- Request or assess information from beyond their direct suppliers, including relevant third-party industry programs, independent third-party audit reports of SORs, other monitoring sources or through direct engagement with upstream supply chain actors/SORs.
- Conduct checks and evaluate the effectiveness of third-party systems (including iTSCi, BSP, RJC, LBMA and RMI).
- Include specific SOR data if a public issuer does not identify 100 percent of the SORs in its supply chain. The public issuer should state how it measures the completeness of its data, i.e., numbers or percent of suppliers evaluated/identified, whether by percentage of sales or absolute numbers, that have responded.
- Include specific SOR data if the public issuer identified system-level gaps (i.e., lack of due diligence capacity in certain regions or SORs not participating in industry programs). Identified risks should detail what gaps/issues have been brought to the attention of other stakeholders, including governmental organizations, Non-Governmental Organizations (NGOs) and industry groups.

³⁷ RMI's RCOI Report includes aggregated lists of countries of origin for 3TG from SORs that have been validated by a third party auditor and are compliant with the CFSP protocols. Country of origin data is provided for each SOR based on specified risk levels. Due to commercial confidentiality considerations and agreements, RMI does not report country- or mine-level data for individual SORs. The RMI RCOI Report is currently being expanded to include country of origin data for SORs that are audited under LBMA's Responsible Gold Guidance program. Country of origin data is not yet collected or provided to RMI from the Responsible Jewelry Council Chain-of-Custody Certification program.

³⁸ These examples may not be validated by a third party.



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- Consider spot checks of the information provided by suppliers to assess their program and information they provide customers (e.g., desk review, site visits or audits).
- Include conflict-minerals information review for completeness and accuracy; may be included in supplier audits such as quality or Corporate Social Responsibility (CSR) audits.
- Engage with SORs through industry programs to request mine of origin and transit routes.
- Engage through industry programs to assess whether SORs have carried out all elements of due diligence for responsible supply chains of minerals from CAHRAs.

IV. OECD Step 3: Design and Implement a Strategy to Respond to Identified Risks

The objective of this section is to describe the relevant approaches for downstream companies implied by the OECD Guidance Step 3 and how the outcomes of implementing the OECD Guidance Step 3 may fulfill SEC compliance obligations.

A. OECD Step 3: Strategy to Respond to Identified Risks

The objective of OECD Step 3 is to evaluate and respond to identified risks in order to prevent or mitigate adverse impacts. Companies can cooperate to carry out Step 3 recommendations through industry initiatives. However, if working through industry initiatives, companies should ensure that all joint work duly takes into consideration circumstances specific to the individual company.

Downstream companies are responsible for identifying SORs in their supply chain and assessing if the SORs have implemented due diligence in accordance to the OECD Guidance.

The OECD Guidance provides detailed recommendations to downstream companies on how they can manage supply chain risks.³⁹

In summary:

- If downstream companies are unable to identify the SORs in their minerals supply chain, downstream companies should adopt a risk management plan that will enable them to identify the SORs.

³⁹ For the full text, refer to OECD Guidance p. 103 Step 3 Section II: Risk Management for Downstream Companies.



- If downstream companies have identified SORs with red flag risks in their supply chains, downstream companies can:
 - Continue trading if measureable risk mitigation is carried out
 - Temporarily suspend trade
 - Disengage where mitigation is not feasible. This is the recommended risk mitigation step if there are serious human rights abuses or indirect/direct support to non-state armed groups.⁴⁰

Red Flag Risks

To provide context, below is a review of the OECD Guidance definition of red-flag triggers.

The OECD Guidance is based upon identifying and managing risks associated with the mineral supply chain. The OECD Guidance defines “red-flag triggers” that, when identified, obligate companies in the supply chain to conduct due diligence in a manner consistent with the OECD Guidance. The OECD Guidance defines red-flag triggers as follows⁴¹:

Red flag locations of mineral origin and transit:

- *The minerals originate from or have been transported via a conflict-affected or high-risk area.*
- *The minerals are claimed to originate from a country that has limited known reserves, likely resources or expected production levels of the mineral in question (i.e., the declared volumes of mineral from that country are out of keeping with its known reserves or expected production levels).*
- *The minerals are claimed to originate from a country in which minerals from conflict-affected and high-risk areas are known to transit.*
- *[from the Gold Supplement] 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.*

Supplier red flags:

- *The company’s suppliers or other known upstream companies have shareholder or other interests in companies that supply minerals from or operate in one of the above-mentioned red flag locations of mineral origin and transit.*

⁴⁰ See Annex II of the OECD Guidance for list of risks and definitions.

⁴¹ OECD Guidance pp.33 and 87

- *The company's suppliers or other known upstream companies are known to have sourced minerals from a red flag location of mineral origin and transit in the last 12 months.*

If a company in the supply chain is unable to determine whether the minerals in the company's possession come from a "red-flag location of mineral origin or transit," it should proceed to Step 1 of the Guidance.



Red Flag Circumstances⁴²

This section is reproduced here to highlight that all of the red-flag triggers are contained in the upstream portion of the supply chain (e.g., SORs and mine of origin). We recommend that downstream companies become familiar with this in order to evaluate their SORs levels of risk. These triggers relate to known locations of mineral transit, known mineral trade by a supplier, or lack of knowledge by a processor or trader whether the minerals it is purchasing came from a red flag location. This idea that risk management is associated with red flags in the upstream supply chain is further supported by the preamble of the 3T supplement on page 32 of the OECD Guidance:

"Scope and definitions

This Supplement provides specific guidance on supply chain due diligence of tin, tantalum and tungsten (hereinafter minerals) from conflict-affected or high-risk areas according to the different positions in the mineral supply chain. It distinguishes between the roles of and the corresponding due diligence recommendations addressed to upstream companies and downstream companies in the supply chain.

For the purposes of this Supplement, "upstream" means the mineral supply chain from the mine to smelters/refiners. "Upstream companies" include miners (artisanal and small-scale or large-scale producers), local traders or exporters from the country of mineral origin, international concentrate traders, mineral re-processors and smelters/refiners. The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and this Supplement on Tin, Tantalum and Tungsten (hereafter "Guidance"), recommends, among other things, that these companies establish a system of internal control over the minerals in their possession (chain of custody or traceability) and establish on-the-ground assessment teams, which may be set up jointly through cooperation among upstream companies while retaining individual responsibility, for generating and sharing verifiable, reliable,

⁴² OECD guidance p. 33 and p. 88



*up-to-date information on the qualitative circumstances of mineral extraction, trade, handling and export from conflict-affected and high-risk areas. **This Guidance calls on these upstream companies to provide the results of risk assessments to their downstream purchasers and have the smelters/refiners' due diligence practices audited by independent third parties, including through an institutionalised mechanism.***

*"Downstream" means the minerals supply chain from smelters/refiners to retailers. "Downstream companies" include metal traders and exchanges, component manufacturers, product manufacturers, original equipment manufacturers (OEMs) and retailers. **The Guidance recommends, among other things, that downstream companies identify, to the best of their efforts, and review the due diligence process of the smelters/refiners in their supply chain and assess whether they adhere to due diligence measures put forward in this Guidance. Downstream companies may participate in industry-wide schemes that assess smelters/refiners' compliance with this Guidance and may draw on the information these schemes provide to help them fulfill the recommendations in this Guidance.***

This distinction reflects the fact that internal control mechanisms based on tracing minerals in a company's possession are generally unfeasible after smelting, with refined metals entering the consumer market as small parts of various components in end products. By virtue of these practical difficulties, downstream companies should establish internal controls over their immediate suppliers and may coordinate efforts through industry-wide initiatives to build leverage over sub-suppliers, overcome practical challenges and effectively discharge the due diligence recommendations contained in this Guidance."

The bold highlights, added here in this paper, are provided for emphasis in clearly identifying how the OECD has identified where the primary risk assessment responsibility lies: with SORs and upstream companies. However, risk assessment is part of downstream companies' responsibilities, in as much as it is incumbent upon the downstream company to assess the data gathered or missing from its supply chain and evaluate the due diligence actions of the SORs in their supply chain. Collaborative industry efforts may assist companies in accomplishing these activities.⁴³ Primarily, downstream companies mitigate risk through working with their direct suppliers individually or collectively through industry programs to identify SORs and encourage those SORs to become independently audited and mitigate any identified risks.

⁴³ OECD Guidance Step 3: Objective, pp. 99 for downstream responsibilities.



One risk management action by downstream companies involves influencing the multi-tiered supply chain to encourage a SOR to participate in an OECD-aligned independent third-party audit program. In some cases, the nature of the company's commercial relationships may make it challenging to influence SOR practices. Instead, a single downstream company may choose to leverage the accumulated responses of many downstream companies to assert sufficient pressure on the SOR to adjust its practices.

- Any description of the products that contain minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country ("not DRC conflict-free" as defined under section 1502 of the Dodd-Frank Act), should be regarded as "non-compliant with OECD and UN GoE recommendations", meaning products for which **due diligence has not been carried out in accordance with these internationally agreed standards**; and
- As a time-bound measure, issuers **should not describe a product as not "DRC conflict free" when the issuer and the mineral processor have (i) taken reasonable steps and made good faith efforts in accordance with the OECD and UN GoE due diligence recommendations to conduct due diligence on the minerals in that product; and (ii) know and can show that they have identified, assessed and responded to risks in accordance with the risk management strategies recommended by the OECD and UN GoE due diligence recommendations.** Where risks of direct or indirect support to public or private security forces are identified and issuers and mineral processors decide to continue trade while pursuing risk mitigation, they should demonstrate significant measurable improvement within six months from the adoption of the risk management plan and have their due diligence practices audited by an independent third party. If within six months from the adoption of the risk management plan there is no significant measurable improvement, issuers and mineral processors should discontinue engagement or suspend the relationship with the supplier for a minimum of three months. Suspension may be accompanied by a revised risk management plan, stating the performance objectives for progressive improvement that should be met before resuming the trade relationship. Under the OECD and UN GoE due diligence recommendations, mitigation is not allowed in case of risks of serious human rights abuses associated with the extraction, transport or trade of minerals or where risks of direct or indirect support to non-state armed groups are identified in the supply chain; and
- Section 1502 of the Dodd-Frank Act provides that a product may be labelled as DRC conflict-free if the product does not contain 3TG that directly or indirectly finance or benefit armed groups in the Covered Countries. Issuers may label products as "DRC conflict free" when the issuer and the mineral processor have (i) taken reasonable steps and made good faith efforts in accordance with the OECD



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and UN GoE due diligence recommendations to conduct due diligence on the minerals in that product; and (ii) know and can show that they do not tolerate nor by any means profit from, contribute to, assist with or facilitate the commission by any party of serious human rights abuses associated with the extraction, transport or trade of minerals and do not provide direct or indirect support to non-state armed groups or public or private security forces, consistent with OECD and UN GoE due diligence recommendations.

Note that regardless of determinations, common practice is for companies to include mechanisms to mitigate the risk identified, if any, in the process.

B. Risk Management versus RCOI Versus Due Diligence

First, the OECD Guidance recognizes that the SOR and other upstream companies hold the primary role in managing risks that minerals may have supported conflict and that the SOR/upstream actor must act when there is a red-flag trigger. Similarly, the SEC sets a requirement for downstream companies to conduct due diligence using an internationally or nationally recognized due diligence standard when a SOR in its supply chain is sourcing from the Covered Countries. The SEC Final Rule sets a red-flag trigger that is consistent with the OECD Guidance. Finally, the OECD risk assessment and management primarily is owned by the smelter, and therefore the downstream companies' role is to assess smelters' due diligence based on an independent third-party audit of the SORs due diligence practices.

Downstream companies have a role in driving effective supplier engagement to obtain a list of smelters that are used in their supply chain. However, the completeness of that list of smelters is advanced through the RCOI process and is not considered a part of risk management as contemplated by the OECD Guidance.

C. Practical Interpretation of OECD Guidance Step 3 for Downstream Companies

Based on the context discussed earlier, the following practical steps are implied by the OECD Guidance for downstream companies that are at least one tier removed from SORs. After establishing a strong management system and assessing supply chain risks in Steps 1 and 2, companies should design and implement a response strategy to those risks according to Step 3. That response strategy is discussed here.

1. Report findings to designated senior management.

After a company has undertaken steps to identify the SORs in its supply chain and steps to understand what countries the SORs are sourcing from, if that information is available and has been provided, the downstream company will have a list of SORs



with associated country of origin information. The origin information could include either unknown country of origin, known sourcing from outside CAHRAs, or known sourcing from CAHRAs. This list and actions that the company can take to investigate the SORs' due diligence and sourcing practices may be reviewed with senior management. These actions may include working directly with tier-one suppliers or an industry association to help mitigate identified risks.

2. Devise and adopt a risk management plan.

The active risk management contemplated by the OECD Guidance is the responsibility of the SOR. The downstream company responsibility is to work through its supply chain to determine if more investigation is required, based on risks identified. The downstream company should verify whether the SOR has practices in place to identify and mitigate risks, which can be achieved through an independent third-party audit offered by an industry program. If the downstream company is leveraging an industry program for this information, the downstream company should understand how the program assesses SORs' risk identification, mitigation actions, and outcomes/resolution.

Below are examples of situations where a downstream company may conduct additional investigations to understand the relevant facts and circumstances.

- "Closed-pipe" supply chain: If a downstream company is knowingly sourcing from a "closed-pipe" program where the SOR is not participating in an industry validation program, then the company may want to document or refer to a central information repository that contains the following:
 - Description of the source.
 - Information on the chain of custody.
 - List of any certification by regional bodies.⁴⁴
 - Description of any other aspects of "due diligence on the source and chain of custody."⁴⁵
- If a downstream company knows or has reason to believe that a SOR in its supply chain is sourcing from a CAHRA, other than through a closed pipe program, or may not know the origin of a SORs material, the downstream company may investigate the SOR's due diligence. This may be via an institutional mechanism⁴⁶ or through an independent third-party audit program, as described below to gain assurance the SOR conforms to the OECD Guidance.

⁴⁴ OECD Guidance pp. 69 - Example include the [International Conference on the Great Lakes Region](#)

⁴⁵ Source: SEC Final Rule

⁴⁶ See OECD Guidance pp. 69



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When a downstream company has identified SORs that meet one of the two conditions listed earlier⁴⁷, the downstream company may consider adopting a management plan to encourage or require relevant first-tier suppliers to:

- Encourage or require the SORs from which they source directly to participate in an independent third-party audit program or institutional mechanism.
- Encourage or require the SORs further up their supply chains to participate in an independent third party audit program or institutional mechanism.

Supply chains are subject to change, such as when suppliers change their suppliers, or SORs change sourcing of their minerals. Engaging with supply chains to obtain complete and supportable data and information is an ongoing practice.

3. Implement the risk management plan, monitor and track performance of risk mitigation, report back to designated senior management, and consider suspending or discontinuing engagement with a supplier after failed attempts at mitigation.

The OECD Guidance focuses on specific expectations for upstream companies in this step; however, the OECD Guidance includes very basic recommendation on actions downstream companies can implement.⁴⁸

The role for downstream companies in this step is to consider building due diligence capacity, awareness and engagement with SORs and to take measures to investigate a SOR's due diligence, directly or collectively. These activities may be conducted through industry programs, independent third-party audit programs or an institutional mechanism. Because downstream companies typically do not have business relationships with SORs, it may be difficult to obtain complete or reliable information.

A downstream company may consider taking the following steps when it knows or has reason to believe that SORs in its supply chain are sourcing from a CAHRA:

- Engage in industry and stakeholder efforts to encourage the SOR to improve due diligence, by means of:
 - Industry or stakeholder initiatives that provide independent audits of the conflict minerals status of SORs, such as the RMI's Conflict-Free Smelter Program.
 - Industry, stakeholder and individual efforts to request SORs to provide information about their due diligence practices and risk management.

⁴⁷ The RMI and its membership encourage all SORs to participate in an independent third party audit program, regardless of their specific sourcing practices.

⁴⁸ OECD Guidance pp. 105 footnote 48.



If a SOR that is in the downstream company's supply chain has been identified by a credible organization to be sourcing minerals that directly or indirectly support armed groups, then the company may establish escalation steps for mitigation. As is consistent with competition principles, the company may work through industry groups or other means to identify where the SOR is in their supply chain and work through its immediate suppliers to encourage that SOR to mitigate the risk. The company is encouraged to work with their direct supplier to change the use of this facility or remove the SOR from the supply chain. Depending upon the number of suppliers that use this facility and by how many tiers the supplier is removed from the company, mitigating the risk could take months or even years.

If the company cannot determine whether a SOR is benefitting armed groups, the company should continue to conduct due diligence to obtain more information. Also, it is recommended that the decision to use or not to use the SOR be made in accordance to the company's individual supplier rules and criteria. Downstream companies should evaluate reasonableness and appropriateness of suppliers' due diligence and criteria for determination and discuss with their suppliers about the company's measure before requiring their suppliers to simply remove the SOR.

Examples of reasons companies may seek to remove a SOR from their current list of SORs:

- Risk of sourcing from suppliers that are supporting conflict/human rights abuses.
- Smelter is unwilling to be transparent about sourcing practices and locations.

4. Undertake additional fact and risk assessments for risks requiring mitigation, or after a change of circumstances.

Step 3D is intended to ensure that identified risks are adequately mitigated and that the information gathered in Steps 2C and 2D is supplemented as the company's supply chain evolves over time. If the sourcing of a SOR is unknown or from a CAHRA, then the downstream company must conduct Step 3C to assess the SOR's sourcing location and/or its due diligence if it sources from a CAHRA.

D. Relationship to SEC Requirements

This section describes how implementation of and outputs from OECD Guidance Step 3 can be utilized to support compliance reporting under the SEC rule.

The SEC Final Rule establishes a trigger for assessing the due diligence of a SOR. That trigger is defined as when the SOR sources from a Covered Country or if the sourcing of the SOR is unknown. OECD Guidance Step 3C is the step where the

downstream company conducts its due diligence as defined by the SEC by investigating the SOR or assessing the SOR's due diligence to the extent practicable. The likely sources of information available to support downstream companies' due diligence of a SOR may include the following:



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- Independent audit or validation programs (such as those offered by the CFSP, LBMA, and the RJC).
- In-region closed-pipe sourcing programs (e.g., Solutions for Hope).
- Statements or other assertions of SORs.
- Indirect information such as smelter location, metal association reports, independent reports, United Nations (UN) reports, and incident monitoring information (e.g., incident reports).

This due diligence of SORs as described earlier is used to support a company's determination whether there is evidence that the SOR is sourcing minerals that are considered conflict-free, may not be conflict-free, or are conflict-undeterminable. By associating the SORs in a company's supply chain with products or product categories, a company may determine the conflict status of the product or product category. The company may also use information derived from these sources to populate its Form SD or Conflict Minerals Report (CMR) if required by the SEC Final Rule.

By implementing a company management plan as described in Section IV, a company may encourage its direct suppliers to transition sourcing away from SORs not participating in an independent third-party audit program and encourage SORs to participate in these programs and maintain their compliance status.

Occasionally, a SOR may be removed from the CFSP-compliant list. This may occur due to the SOR discontinuing operations, or acquisition by another company. It may also occur if the SOR does not pass the applicable audit, and/or the RMI (including LBMA and RJC) is not satisfied that the SOR is making reasonable, good faith efforts toward scheduling and passing the audit. The removal of a SOR from the CFSP-compliant List can impact a public issuer's ability to conclude whether product(s) they manufacture or contract to manufacture are "DRC Conflict Free."

If a SOR is removed from the CFSP list based on the results of a CFSP audit, public issuers can evaluate the product status utilizing the "DRC conflict-free" definitions provided in the OECD letter to the SEC. If a SOR or downstream company has ***"taken reasonable steps and made good faith efforts in accordance with the OECD and UN GoE due diligence recommendations to conduct due diligence on the minerals in that product; and (ii) know and can show that they have identified, assessed and responded to risks in accordance with the risk management***

strategies recommended by the OECD and UN GoE due diligence recommendations” then the material that has been incorporated into a product would be deemed as conflict-free, provided the company has implemented the appropriate risk mitigation, according to the OECD’s definition.⁴⁹

E. Progressive Practice Options

The following elements have been identified as progressive practices that a company may perform to improve its due diligence related to risk management:

- Identify by title the senior manager who is responsible for the program, e.g., Chief Procurement Officer, Chief Sustainability Officer, or VP of Compliance.
- Review third-party assurance program activities to assure they are performing adequate due diligence. This can include review of incident reports provided by BSP and iTSCi to assure identified risks are managed and addressed or evaluating Country of Origin information (COI) provided by a third party for plausibility.
- Participate or otherwise support upstream assurance programs (e.g., BSP, ICGLR and iTSCi) and/or closed-pipe systems such as Solutions for Hope to gain a better understanding of how risks are managed and to assist in the mitigation process as needed.
- Report on the types of red flags that have been identified, e.g., unidentified SORs or SORs in the supply chain that were not determined to be “DRC Conflict-Free” and how the risks were mitigated, including when it is unable to identify a SOR.
- Provide details when an issuer continues, suspends or terminates trade with a non-compliant supplier.
- Spot check public reporting of SORs to ensure they are publicly reporting and mitigating risks as they arise.
- Provide data that indicates that its SOR(s) are verified “DRC conflict-free,” and/or can demonstrate measurable improvement year-over-year.
- Monitor other sources of information including smelter public reports and other data sources on risk to ensure SORs are adequately implementing due diligence.
- Affirmatively procure 3TG from suppliers that have implemented OECD-aligned due diligence programs.

V. OECD Step 4: Carry out independent third-party audit of smelter’s due diligence practices

⁴⁹ <https://www.sec.gov/comments/s7-40-10/s74010-417.pdf>





The objectives of this section are to interpret the downstream company responsibilities contemplated in OECD Step 4; explain how the outcome of the CFSP, LBMA, and RJC audits relate to Step 4; and summarize how downstream companies can use the outcomes from the CFSP to support SEC reporting obligations. These efforts follow once a company has a strong management system, has assessed supply chain risks, and has implemented a strategy to respond to those risks, as described in Steps 1, 2 and 3.

A. OECD Step 4: Carry out independent third-party audit of smelter's due diligence practices

This OECD step defines and provides implementation guidance on the audit scope, principles, activities and criteria to assess a SOR's due diligence practices. In addition, Step 4 describes how actors in the supply chain should develop and support institutionalized mechanisms to oversee and support the implementation of due diligence for responsible supply chains of minerals from CAHRAs.

Audit Outcomes

The independent third-party audit of SORs assesses all activities, processes, and system used by the SOR to conduct supply chain due diligence on minerals from CAHRAs. This includes, but is not limited to: SOR controls over the mineral supply chain, information disclosed to downstream companies, chain of custody and other mineral information, SOR risk assessments including on-the-ground research and SOR strategies for risk management. Audit conclusions include a determination of whether the SOR's due diligence is in conformance with OECD Guidance⁵⁰, including recommendations for improvement of SOR due diligence practices.

The CFSP, LBMA Responsible Gold Guidance, and the RJC Chain-of-Custody programs are designed to achieve the above outcomes and may provide additional information. For example, the CFSP provides additional information such as, a determination of whether the SOR has the processes and systems in place to specifically support DRC conflict-free sourcing; a list SORs that are validated to CFSP protocols (including name and address); SOR supply chain policies; SOR public due diligence reports; and aggregated RCOI data for validated SORs.

B. Practical Interpretation of OECD Guidance Step 4 for Downstream Companies

Companies can accomplish their due diligence responsibilities with the cooperation of others, such as industry associations or third parties, to maximize the reach and

⁵⁰ Including OECD Step 5 reporting requirements.

effectiveness of their due diligence implementation. Small and medium enterprises are especially encouraged to join or build partnerships with industry organizations.

Specifically, downstream companies are expected to participate in and contribute to an institutionalized mechanism that facilitates independent third-party audits of SORs in accordance with the OECD Guidance.^{51,52} The use of industry programs to carry out independent third-party audits improves efficiencies of due diligence implementation and is especially relevant and practical when companies do not have a direct relationship with the SOR. However, as noted by the OECD, participation in industry associations, or use of information produced by these organizations, does not remove the individual company's responsibility to undertake appropriate due diligence themselves.



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Some examples of how a downstream company might fulfill its obligation to support an industry organization include:

- Financial contribution to an organization that audits 3TG SORs or to a fund that is used to support audits of 3TG SORs and relevant training and capacity-building activities.
- Membership and participation in the organization implementing the assessment program:
 - Contribute to continual improvement of relevant industry organizations and industry mechanisms.
 - Contribute to thought leadership within relevant industry organizations and industry mechanisms. Participation in relevant workgroups and task forces within industry organizations and industry mechanisms.
 - Membership in an industry association that contributes and engages in such activities as SOR outreach.
- Developing, piloting, or supporting best practices to be undertaken by the third-party organization, such as identifying approaches to encourage suppliers to source responsibly from CAHRAs.

C. Relationship to SEC Requirements

As noted, the results of an independent audit of a SOR conducted in conformance with the OECD Guidance can support a downstream company's SEC reporting obligations. Downstream companies using metals processed by SORs audited to the CFSP or equivalent protocol can utilize the outcome of the CFSP audit to support their efforts to demonstrate reasonable due diligence and country of origin inquiry.

⁵¹ See OECD Guidance pp. 50. While the language of the OECD Guidance characterizes these schemes as certification schemes, the Conflict-Free Smelter Program is not a certification scheme as it is not a certifying body.

⁵² Industry program (BSP, CFSP, DMCC, iTSCi, LBMA, and RJC) conformance to the OECD Guidance can be assessed through results of an OECD Alignment Assessment exercise.

Through independent audits, companies may ascertain information that can be useful for SEC reporting requirements and that may augment individual downstream company research, including:



- Country of origin information for SORs that have successfully completed CFSP audits.
- DRC conflict-free status information for SORs that successfully have completed CFSP audits.

These audits satisfy the SEC requirement for the “source and chain of custody” of minerals sourced from the Covered Countries. For example, if an issuer can associate all the SORs used in a supply chain of one of its product categories as being complaint via the audit programs, then it could conclude in the SEC CMR that this product category is DRC conflict-free.

D. Progressive Practice Options

The following elements have been identified as progressive practices to consider when evaluating the independent audits of SORs:

- Consider spot checks of the information provided by SORs to assess understanding of OECD expectations and assess information being provided. Such checks could include site visits or audits.
- Review SOR's websites to assure OECD Step 5 has been completed.

VI. OECD Step 5: Report Annually on Supply Chain Due Diligence

This section outlines the approaches a company may take to meet its reporting obligation under the SEC Final Rule. It should be noted that Step 5 of the OECD Guidance has a different stated objective for public reporting than that of the SEC rule.

The OECD Guidance Step 5 recommends that companies publicly report on their due diligence for responsible supply chains of minerals from CAHRAs to generate public confidence in measures taken. The SEC rule requires public disclosure to bring greater public awareness of the source of companies’ conflict minerals in their products. These differing public reporting objectives drive different requirements for OECD reporting and SEC conflict minerals reports. The following section discusses common practices for meeting both requirements, with the focus on addressing the more specific and detailed reporting requirements contained in the SEC Final Rule.



A. OECD Step 5: Report Annually on Supply Chain Due Diligence

The OECD Guidance Step 5 recommends that companies report annually on their supply chain due diligence for minerals from CAHRA, not necessarily restricted to the DRC or its adjoining countries nor limited to 3TG. The OECD Guidance also states that reports by downstream companies specifically should include information on each company's:

- Management systems, such as the company's supply chain due diligence policy and an explanation of the management structure responsible for the company's due diligence.
- Risk assessment of the process to identify SORs in the supply chain and assess their due diligence practices, including the published list of qualified SORs through industry validation schemes conforming to the OECD Guidance.
- Risk management system that describes the steps taken to manage risks, including a summary on the strategy for risk mitigation in the risk management plan, capability-training, if any, and the involvement of affected stakeholders; and disclose the efforts made by the company to monitor and track performance for risk mitigation and all the instances and results of follow-up after six months to evaluate significant and measurable improvement.

B. Relationship to SEC Requirements

The reporting recommended for downstream companies by the OECD Guidance is compatible with that required by the SEC Final Rule, with the exception that the requirements for an IPISA in the SEC Final Rule are more specific and more detailed than the recommendations set out in the OECD Guidance.

As a result, the two regimes may be accommodated efficiently by making one public report via the SEC Form SD / Conflict Mineral Report (CMR) in accordance with the Final Rule. Each of these reports is discussed below.

a. SEC Form SD

The SEC Final Rule requires companies to file Form SD if any product manufactured by an issuer or contracted for manufacture by an issuer contains conflict minerals necessary to the functionality or production of the product, as those terms are defined in the rule. This requirement does not depend upon their country of origin. The contents of Form SD vary depending on the circumstances surrounding the conflict minerals. If the company has no reason to believe that conflict minerals originated in a Covered Country or determines that they originated from scrap or recycled material, the company's Form SD only needs to contain a brief description of the RCOI it performed and the results of the RCOI.



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Form SD does not specify any particular format for reporting the required information, and the rule allows issuers the flexibility to describe their products specifically or in broad categories, based on the issuer's individual facts and circumstances.

b. SEC Conflict Minerals Report

If the company has reason to believe that necessary conflict minerals originated in a Covered Country, it must conduct due diligence on the source and origin of the minerals and prepare a CMR containing a description of the due diligence process, the facilities used to process the minerals, the country of origin and the efforts to determine the mine or location of origin.

c. Independent Private Sector Audit

The SEC requires an Independent Private Sector Audit (IPSA) of the CMR if an issuer describes their product(s) as DRC Conflict-Free.⁵³ The SEC issued the following guidance in April 2014, after the district court issued its decision:⁵⁴

No company is required to describe its products as "DRC conflict free," having "not been found to be 'DRC conflict free,'" or "DRC conflict undeterminable." If a company voluntarily elects to describe any of its products as "DRC conflict free" in its Conflict Minerals Report, it would be permitted to do so provided it had obtained an independent private sector audit (IPSA) as required by the rule. Pending further action, an IPSA will not be required unless a company voluntarily elects to describe a product as "DRC conflict free" in its Conflict Minerals Report.

The SEC Final Rule sets forth the two IPSA objectives. The IPSA may be conducted by the financial auditor (as a non-audit service), a different CPA firm, or a non-CPA auditor. The IPSA must be done according to the Generally Accepted Government Auditing Standards (GAGAS, or "Yellow Book"), with all CPAs and the non-CPAs using the relevant Yellow Book auditing standards as specified. The public issuer submits the IPSA report to the SEC with their CMR. Nothing in the SEC Rule prevents a public issuer from obtaining and submitting an IPSA regardless of their product determination or non-determination as may be the case.

⁵³ No independent private sector audit is required for (i) products that are found to be conflict undeterminable, (ii) where a nationally or internationally recognized due diligence framework does not exist for a necessary conflict mineral, or (iii) where as a result of the due diligence the company determines that its conflict minerals did not originate in the DRC or an adjoining country (or it determines as a result of that due diligence that its necessary conflict minerals did come from recycled or scrap sources). See full text of SEC Final Rule for more details: <http://www.sec.gov/rules/final/2012/34-67716.pdf>.

⁵⁴ <https://www.sec.gov/News/PublicStmnt/Detail/PublicStmnt/1370541681994>. The SEC may choose to issue new guidance pending results of judicial action.



The company may consider the following practices:

- Determine whether or not an IPSA is required by legislation or otherwise desired by the company.
- Identify the scope and form of the IPSA. Companies should affirmatively assert the scope and form of the audit in line with their objectives.
- Select and engage audit firms while taking into account independence requirements, among other criteria.
- Assign a “responsible person” to oversee the audit engagement, agree on criteria to be used, and provide any necessary written representations.
- Utilize industry-wide processes for auditing SORs and assessing upstream due diligence activities, where possible, and limit the company’s IPSA scope to the scope contemplated by the SEC rule and any additional guidance on scope from the SEC regarding downstream due diligence processes.
- Determine whether the company’s financial auditor will (or may) be used to conduct the IPSA. This may require special approval of the company’s board to conform to other SEC rules or regulatory requirements, or company management practices.
- Make a reasonable determination of what products or families of products the company will conclude are DRC Conflict Free.
- Decide whether attestation standards or performance standards are better suited to the IPSA for your company.
- Consider a procurement process that involves at least a couple of reputable firms.
- Seek involvement of representatives from company functional groups who have experience with assurance engagements for SEC filings. This may include, but need not be limited to, Legal, the CFO, and Internal Audit.
- Ask prospective IPSA firms about their perspectives, distinctions, and what they regard as aspects of a quality audit.
- Ask prospective firms how your company can prepare for a successful outcome of the IPSA.

C. Progressive Practices Options

The following elements have been identified as progressive practices to consider when preparing the Form SD and CMR:

Form SD

- Most Forms SD have been very short, with very few exceeding two pages.
- The company officials signing the Form SD have included CEO, General Counsel, Chief Compliance Officer, Risk Manager, or other senior officials.



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- Organize the CMR such that the OECD's five steps are clearly identified and addressed. Many RMI member companies have included section headings for each of the five steps, to facilitate analysis by external stakeholders.
- State specifically what relevant organizations the company is a member of, such as the RMI. If a member of the RMI, include the company's member number.
- Provide information on active participation in any relevant workgroup that supports industry initiatives (e.g., RMI Smelter Engagement Team).
- Provide list of processing facilities regardless of product description.
- Provide list of country of origin regardless of product description.
- Provide description of efforts to determine mine or location of origin.
- Disclose the steps that have been taken or will be taken to mitigate risk and to improve its due diligence.
- If the company has disclosed steps that it "will take" (a forward-looking statement) in prior Conflict Minerals Reports, address each of these items in some way in the subsequent CMR. Even if the company has not taken action on an item in a previously submitted forward-looking statement, consider whether the transparency of acknowledging this (and perhaps reasons for not taking action) provides value to the company.
- If the company has procured an independent assessment of any aspect(s) of the conflict minerals program, mention this in the CMR. Auditors and consultants have offered IPSA Readiness Assessments, conflict minerals program reviews, and various other service offerings.
- Mention if the company's Internal Audit function has reviewed aspect(s) of the conflict minerals program.
- Conduct an IPSA of the CMR regardless of the product description.

VII. Emerging Issues

A. Evolving Scope of the CFSP Audit

The RMI established the Conflict-Free Smelter Program (CFSP) to cultivate transparent mineral supply chains and sustainable corporate engagement in the mineral sector with a view to prevent the extraction and trade of minerals from becoming a source of conflict, human rights abuses, and insecurity.

The CFSP audit protocols for tantalum, tin, tungsten and gold (3TG) were developed as a specific, practical framework to consistently audit the operations and practices of SORs. The protocols follow guidance provided by the final report of the UN Group of Experts to the Security Council, 15 November 2010 and by the OECD Guidance.



The forthcoming CFSP protocols further align the CFSP audit with the OECD Guidance. Relative to previous versions, the forthcoming protocols place increased emphasis on the review of management systems and apply a global definition of CAHRA, as defined by the OECD Guidance, including but not limited to the Covered Countries. The protocols also include all OECD Annex II risks for sourcing from CAHRAs.

The audit process reviews a smelter's supply chain due diligence activities of all applicable material inputs and assesses its alignment with the five-step framework of the OECD Guidance.

The CFSP protocols do not cover all human rights, social, environmental and legal compliance risks that downstream companies and SORs may want to consider as part of their responsible sourcing practices. A successful CFSP audit should not be used to imply operating performance beyond the strict scope of the CFSP.

B. European Union Responsible Sourcing Regulation

On 3 April 2017, the European Council adopted text for a responsible trading strategy for minerals and metals from conflict affected and high risk areas. The text results from an agreement reached with the European Parliament in November 2016, subsequently approved by the Parliament in a plenary vote on 16 March 2017.

The EU conflict minerals framework involves the establishment of a mandatory due diligence system for EU importers, smelters and refiners, and voluntary reporting on sourcing practices by downstream EU manufacturers and sellers. The framework limits the regulatory scope to 3TG minerals and but is otherwise founded on the OECD Due Diligence Guidance for responsible mineral sourcing.

The framework consists of the following:

- Minerals: Includes the precursors of 3TG. Exemptions include recycled materials, and existing stocks.
- Geographic Scope: The scope is global for this regulation, which means due diligence is required when sourcing from all CAHRA. The Commission is expected to publish a handbook for operators to judge which areas meet this threshold as well as to task an expert group with issuing a list, including information relevant for companies to carry out due diligence.
- Subject Companies: The regulation contains mandatory requirements for EU importers of 3TG metals and minerals, and for smelters and refiners exporting to the EU, and voluntary measures for downstream companies. Mandatory



components are limited to EU smelters or refiners importing minerals and direct mineral and metal importers of 3TG. The regulation includes volume thresholds to protect small importers but regulation is designed to cover 95 percent of imports and the volume threshold may eventually be phased out. These companies are required to conduct due diligence, source responsibly, and provide information via public reports that will be mandatory after a certain period. EU member states' competent authorities will be responsible for determining compliance and assessing any penalties, if needed. The regulation does not require due diligence by manufacturers or importers and sellers of components and finished goods. However, downstream companies will be encouraged to make voluntary disclosures of their due diligence. The system envisions a database of downstream companies that engage in voluntary due diligence, designed to increase transparency and available data, and create a system of peer pressure.

- **Reporting:** The Commission will report a list of responsible global smelters and refiners. A definition of "importer" will be included in the regulation based on weight of imports. These companies will be required to report publicly and via private reports to competent authorities. The EU will have disclosure guidelines for EU-listed and other large companies in the context of its mandatory reporting on non-financial information under Directive 2014/95/EU.
- The text includes a review clause whereby the effectiveness of the regulation will be reviewed by the European Commission two years after entry into application and every three years thereafter. The European Commission will assess the performance of the regulation and determine whether there is need for improvement on elements including, for instance, product scope and extension of mandatory due diligence to downstream. The European Commission will be required to review and report to Parliament and the Council on the effectiveness of the new law – including both its impact on the ground and the compliance by the EU firms, and, should it not induce the desired effect, consider additional mandatory measures.
- The most prudent step for companies to consider when preparing for the EU Conflict Minerals Regulation would consist of adopting an OECD-like approach in their due diligence, including but not limited to extending due diligence to a global scope beyond the Covered Countries.

VIII. Summary

This document provides practical guidance in implementing a downstream company's responsible mineral sourcing program. It is based on reasonable approaches, many of

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which stem from lessons learned through years of company implementation or similar experiences from other compliance programs across several industries. Additionally, based on the experience of the first three years of reporting, this version of the document also includes progressive practices that provide guidance on additional activities and information a company may want to provide to be viewed as an industry leader, to enhance its brand reputation, and/or to meet external stakeholder expectations. The OECD Guidance, SEC Final Rule, and EU Regulation allow for flexibility in how an organization may choose to implement its program. It is important that this flexibility remains, so as not to limit innovative solutions and improvements in systems and approaches over time.



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