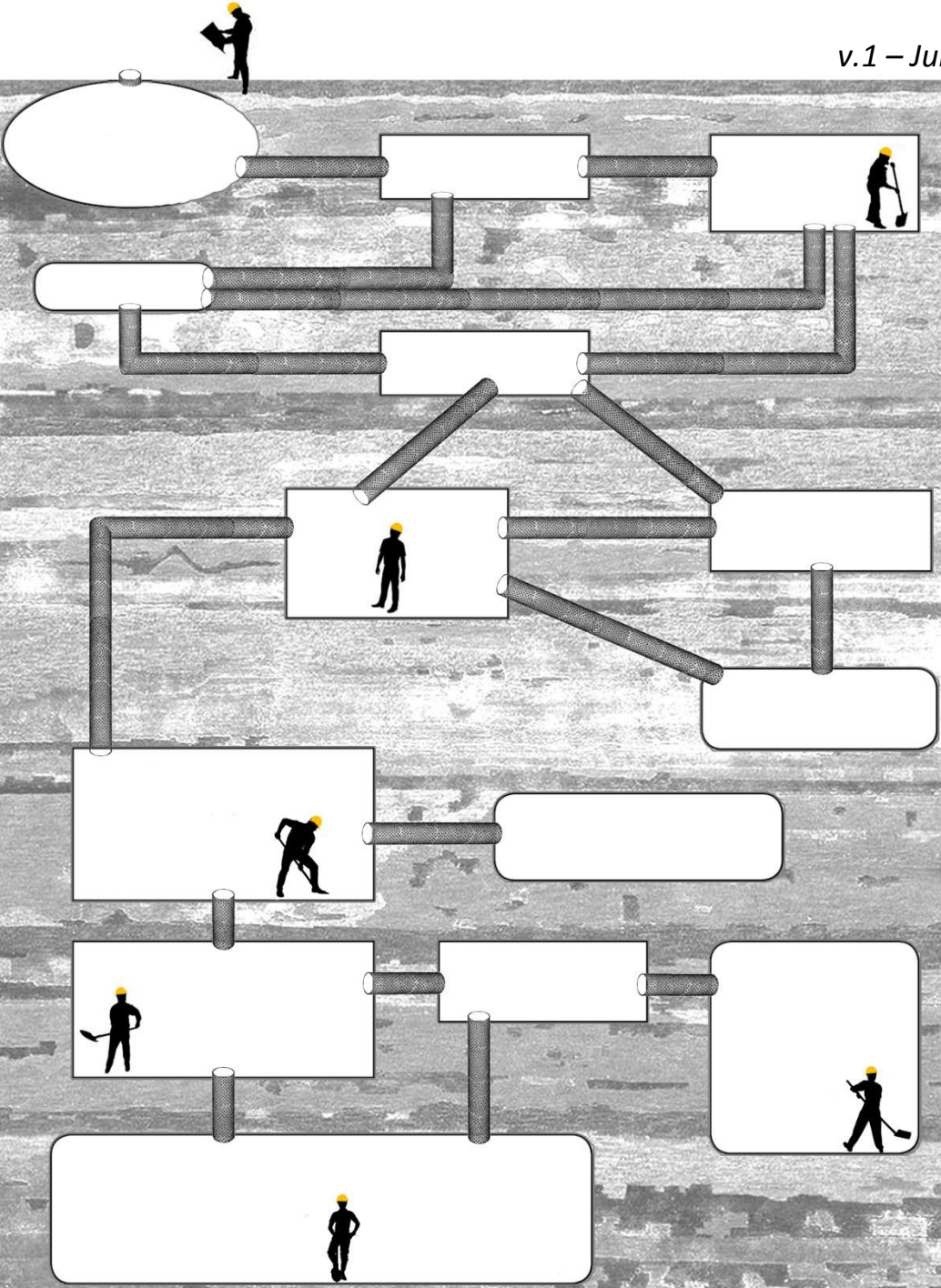


# Dodd-Frank Section 1502 – RY2014 Filing Evaluation

v.1 – July 27, 2015



# Executive Summary

This study systematically evaluates public company “conflict mineral” filings submitted to the SEC for reporting year 2014 under Dodd-Frank Section 1502 – a disclosure law requiring public companies reveal the origin of the so-called "conflict minerals" tin, tungsten, tantalum and gold contained in their products. As of July 17, 2015, 1,267 issuers filed a Conflict Mineral Disclosure (CMD) for reporting year 2014.

This 3<sup>rd</sup> party assessment offers an independent perspective on the extent to which filers’ conflict minerals disclosure is in conformance with the SEC Rule. The evaluation’s principal instrument features compliance-focused criteria against which the company filings were qualitatively assessed. In addition, this compliance-based metric is juxtaposed with a “good practice” metric developed by the Responsible Sourcing Network (RSN) and Sustainalytics. In this manner the filings are evaluated based on two distinct evaluation paradigms.

The 1,267 issuers had a combined market capitalization of just about \$16 trillion, and three-quarters of affected companies are manufacturers. One fifth of filers filed a Form SD only, and four fifths of the issuers also filed an in-depth Conflict Mineral Report (CMR).

With regard to compliance on the part of Form SD-only issuers, the findings based on the SEC Rule-derived 6-point criteria revealed strong compliance, with the notable shortcoming among some filers that the URL on the Form SD to their website was either not provided or not working. In all, 97% of Form SD-only filers were at or above the 75% compliance mark.

The SEC Rule-derived 15-point criteria applied to the CMR filers produced mixed results. The most noticeable shortcoming was that more than half of the filers did not disclose the country/ies of 3TG origin. Almost half of the filers did not disclose the facilities used to process the necessary 3TG. Many companies also did not define due diligence (DD) as five steps, or describe the Reasonable Country of Origin Inquiry (RCOI) steps separately from DD. While some of these gaps are ostensibly due to supply chain data limitations, other gaps point to insufficient disclosure of information. In all, 76% of CMR filers were at or above the 75% compliance mark.

Also noteworthy is that the average divergence between the compliance versus the “good practice” score was 42.5 percentage points. This finding was both reflective of the reporting approach intentionally selected by the individual company and indicative of integral differences between each respective assessment framework.



# Contents

Executive Summary.....	2
Figures and Tables .....	4
I. Acknowledgements .....	5
II. Purpose .....	5
III. Background .....	5
IV. Methods and Implementation.....	7
<i>A. Data</i> .....	7
<i>B. Specification of approach and research design</i> .....	7
<i>C. Criteria selection, instruments, and data analysis</i> .....	7
i. Compliance-based instrument.....	7
ii. “Good practice” instrument.....	9
iii. IPSA instrument.....	10
<i>D. Evaluation team and data quality control</i> .....	11
<i>E. Challenges</i> .....	12
<i>F. Independence of author and competing interests</i> .....	13
V. Findings.....	13
<i>A. RY 2014 vs. RY 2013 comparison</i> .....	13
<i>B. RY 2014 filer profile</i> .....	14
<i>C. Determinations</i> .....	16
<i>D. Form SD-only filers</i> .....	18
<i>E. Form SD + CMR filers</i> .....	20
<i>F. IPSA filings</i> .....	25
VI. Appendices .....	28
Appendix A: Glossary of acronyms .....	28
Appendix B: Criteria for Form SD-only filers.....	29
Appendix C: Criteria for Form SD + CMR filers .....	30
Appendix D: “Good practice” indicators.....	32
Appendix E: Scores.....	39



# Figures and Tables

<i>Figure 1: SIC division and industry</i>	14
<i>Figure 2: Market capitalization (in billion) – End of May 2015</i>	15
<i>Figure 3: Big vs. small company, filer type, RY 2013 filer, filing date</i>	16
<i>Figure 4: Determinations</i>	17
<i>Figure 5: Results of Form SD-only filers based on 6 compliance-based criteria</i>	19
<i>Figure 6: Form SD-only filer score, histogram</i>	19
<i>Figure 7: Form SD-only filer score, percentile rank</i>	20
<i>Figure 8: Results of CMR filers based on 15 compliance-based criteria</i>	21
<i>Figure 9: Form SD + CMR filer score filer score, histogram</i>	22
<i>Figure 10: Form SD + CMR filer score, percentile rank</i>	22
<i>Figure 11: 3TG minerals in products</i>	23
<i>Figure 12: CFSI CMRT use, reliance on CFSI SOR list, and sourcing requirements</i>	24
<i>Figure 13: Reported number of audited conflict-free SORs in supply chain</i>	24
<i>Figure 14: Membership in an audit/verification scheme</i>	25
<i>Table 1: SIC Division</i>	14
<i>Table 2: Manufacturing Industry</i>	14
<i>Table 3: Market capitalization (in billion) – End of May 2015</i>	15
<i>Table 4: # of suppliers, % of audited SORs, and supplier response rate</i>	23
<i>Table 5: Analysis of IPSAs filed with SEC for reporting year 2014</i>	26
<i>Table 6: Explanation underpinning determination – IPSA filers</i>	27



# I. Acknowledgements

The author wishes to thank Assent Compliance for initiating and funding this independent evaluation of the 2015 Dodd-Frank Section 1502 filings. The study's *Advisory Panel* – comprised of Fern Abrams of IPC, Lawrence Heim of Elm Sustainability Partners, Michael Littenberg of Schulte, Roth & Zabel, Charles Riepenhoff, Jr. of KPMG and Jonathan Hughes of Assent Compliance – critiqued the evaluation instrument and provided valuable advice. Douglas Hileman and Lawrence Heim provided input on the IPSA analysis indicators. Nicolai Eddy of Morningstar went the extra mile to provide us with financial data on the filers.



A core team of nine Tulane University Juris Doctor candidates and recently minted graduates, led by the author, comprised the core evaluation team. Valerie Barrios Arce, Michael Ball, Jason Broecker, Bryanna Frazier, Michael McCoy, Jackeline Neira, Emilie Pfister, Stefan Reed, and Jacob VanAusdall diligently combed through the filings with exacting legal precision. A special thank you to the evaluation coordinators Michael Ball and Michael McCoy, who tirelessly rallied the team and ensured uniformity. Jiahua (Java) Xu assisted with – and excelled in – data cleaning, data analysis and graphing. In short, this evaluation is a product of concerted teamwork. You all made this study possible!

## II. Purpose

The primary purpose of this evaluation is to provide an independent, 3<sup>rd</sup> party assessment of the extent to which the filing companies complied with the letter and spirit of the SEC Rule<sup>1</sup> in reporting year 2014. By applying SEC Rule-derived criteria to issuer filings, insight is generated revealing the degree of micro- and macro-level compliance with the Rule. Secondly, the evaluation sets out to juxtapose the compliance-based findings with those of the “good practice” indicators as developed by RSN and Sustainalytics.

## III. Background

Reporting year 2014 represented the 2<sup>nd</sup> year certain issuers were required to file a specialized disclosure under the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act Section 1502. The law mandates that companies consuming tin, tantalum, tungsten and gold (3TG) and their derivatives identify and publicly disclose the origin of said minerals. The rationale behind this unprecedented sunshine law is that due diligence and public disclosure might curtail revenue flowing to armed groups perpetuating conflict and atrocities in the Democratic

---

<sup>1</sup> *Conflict Minerals*, 77 Fed. Reg. 56,274 (Sept. 12, 2012) (codified at 17 C.F.R. §§ 240, 249b).



Republic of the Congo. At a minimum, so goes the argument, 3TG-consuming public companies in the U.S. would not be aiding and abetting atrocities committed half-way around the globe.

Another particularity about the law is it inverts the “*in dubio pro reo*” (innocent until proven guilty) principle. If a company’s product contains 3TG necessary to the functionality or production of that product, it is automatically classified as a “conflict mineral.” Indeed the term “conflict mineral”, as defined in the SEC Rule, signifies “Columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives, which are limited to tantalum, tin, and tungsten” – regardless of the origin of those materials. By undertaking an RCOI and performing a specific type of due diligence, it is thus possible, for example, that a company may find that its products are “DRC conflict free with conflict minerals.”



While to date we only have anecdotal evidence and divergent expert perspectives pointing to the law’s impact in the Covered Countries, its impact on the U.S. market is better understood.<sup>2</sup> Between July 23, 2013 and the June 2, 2014 due date of Form SD filing – 216 working days – the affected 1,300 filing issuers<sup>3</sup> worked a combined total of 6 million hours on their conflict mineral program (“CMP”) and reporting.<sup>4</sup> Multiplying the hours they dedicated to their CMP with their respective hourly labor value, yields an aggregate, extrapolated cost of \$420 million. Companies spent a combined total of \$149 million on non-IT related external resources (e.g. consultants and lawyers), almost \$41 million on performing a gap analysis on their respective IT systems and a combined \$97.5 million on the actual IT project. In total, issuers incurred a total expenditure of \$709.7 million, on average half a million dollars per filing issuer.

The one positive outcome observed by 78% of companies was that they had improved their ability to respond to customer requests for CM-related information. On the other hand, companies expressing criticism of the law argued that it rendered affected companies less competitive due to the cost burden, it was unlikely that the desired impact was being achieved in the DRC, that it was unrealistic that with due diligence required by public companies alone one could overcome conflict in the DRC, and that it was inconsistent with the history of US securities law for the SEC to act as a regulator of social responsibility.

---

<sup>2</sup> See Bayer, C.N., *Dodd-Frank Section 1502: Post-Filing Survey 2014*, <http://www.payson.tulane.edu/welcome-tulanes-dodd-frank-section-1502-post-filing-survey-2014-presentation>

<sup>3</sup> At the time of the survey the filer count was ca. 1,300. As at now it is 1,320 filers for RY 2013 in total.

<sup>4</sup> Although the final rule was adopted by the SEC on August 22, 2012, companies – in general – revved their engines on their own conflict mineral program when U.S. District Judge Wilkins upheld the rule on July 23, 2013, denying plaintiffs NAM, US Chamber of Commerce and Business Roundtable a motion for summary judgment against the SEC’s conflict mineral rule.

## IV. Methods and Implementation

### A. Data

By July 17, 2015, 1,267 issuers had filed a Conflict Mineral Disclosure (CMD) with the SEC for reporting year 2014. These filings comprised the data “universe” which we evaluated. Apart from verifying whether the referenced URL in the Form SD or CMR would lead to the stated resource, and comparing this year’s filers with those of last year, no other official company documentation, filings, or 3<sup>rd</sup> party sources were consulted. For the purposes of this report, the 17<sup>th</sup> of July, 2015 represented the cut-off date: issuers that filed for reporting year 2014 before such time were taken into account in this study, after which they were not.<sup>5</sup>



### B. Specification of approach and research design

First in order was to conceptualize the evaluation. What constitutes compliance with the SEC Rule pursuant to Dodd-Frank Section 1502? What is not required by the Rule? At this initial stage the author defined the purpose and basic parameters of the evaluation. The evaluation’s compliance-based research design, once devised by the author, was communicated to Assent Compliance.

Assent Compliance agreed to the approach and design, however arguing that the evaluation might be more insightful if the compliance-based metric was juxtaposed with that of a “good practice” filing evaluation perspective. For the purposes of contrasting the compliance-based metric with that of a “good practice” metric, two indicator matrices were considered: those featured in: 1) Amnesty International and Global Witness’ *Digging for Transparency*<sup>6</sup> and (2) Responsible Sourcing Network (RSN) and Sustainalytics’ *Mining the Disclosures*<sup>7</sup> and *Indicators Longlist*. As the latter’s indicators contain more specificity it was selected to represent the “good practice” indicators. Thus, the study presents two distinct evaluation perspectives, each with a respective filer “score.”

### C. Criteria selection, instruments, and data analysis

#### i. Compliance-based instrument

Before designating the individual criteria for the compliance-based section, parameters were defined. The criteria would:

---

<sup>5</sup> For example, Ethan Allen Interiors, which filed on July 20, 2015, and Emcor Group, which filed on July 21, 2015, were not included in this study.

<sup>6</sup> Amnesty International and Global Witness, *Digging for Transparency*, April 2015, <https://www.globalwitness.org/campaigns/democratic-republic-congo/digging-transparency/>

<sup>7</sup> RSN/Sustainalytics, *Mining the Disclosures: An Investor Guide to Conflict Minerals Reporting*, 2015, <http://www.sourcingnetwork.org/mining-disclosures-2014>

- be as objective as possible, in order to derive a fact-based assessment of compliance;
- represent the minimum filing criteria as required by the SEC Rule as well as communicated in subsequent instructions and clarifications;<sup>8</sup>
- take company filing information at face value, i.e. they do not question the information provided;<sup>9</sup>
- not involve consulting other official company documentation, filings, or 3<sup>rd</sup> party information sources (except for checking on the referenced company URL to the CMD);
- be cognizant of the fact that companies may not disclose more than what is required to live up to the SEC Rule;
- be mindful of the fact that even the most conscientious compliance, due diligence, and even ethical sourcing on the part of issuers will not alone solve the immense and multi-faceted issues facing the DRC.



Operationalizing a compliance-based approach required a careful reading of the SEC Rule and parsing out actually stipulated requirements of companies. Further SEC sources consulted include the SEC Statement of April 29, 2014,<sup>10</sup> the Order Issuing Stay of May 2, 2014,<sup>11</sup> the SEC's FAQs,<sup>12</sup> and Keith Higgins' Sep. 15, 2014 comments in Chicago.<sup>13</sup>

So as not to compare apples and oranges, separate criteria were applied to Form SD filers and the Form SD + CMR filers (see *Appendix B: Criteria for Form SD-only filers* and *Appendix C: Criteria for Form SD + CMR filers*). However, in each case the criteria were designed to yield binary outcomes. Only when an item was amiss would a point be deducted. An "NA" would change the scoring denominator, a "No" or would receive a point deduction. In other words, the point denominator would vary depending on the issuer's particular case. For example, if the filer's determination was "DRC conflict undeterminable", the denominator would be 14 possible points as the 7<sup>th</sup> criteria – *If "DRC conflict free," was IPSA filed as part of CMR?* – would not apply to the case of that filer.

<sup>8</sup> Exchange Act Rule 13p-1 and Form SD and subsequent communications, e.g. the SEC's Statement on the Effect of the Recent Court of Appeals Decision on the Conflict Minerals Rule. April 29, 2014.

<http://www.sec.gov/News/PublicStmt/Detail/PublicStmt/1370541681994>

<sup>9</sup> For example, the company's conclusional statement was accepted as stated (or – if the specific determination labels were not used – how we interpreted the conclusional statement), not what we thought the determination the company should have stated based on the "Due Diligence" efforts as disclosed by the company.

<sup>10</sup> SEC, Statement on the Effect of the Recent Court of Appeals Decision on the Conflict Minerals Rule, April 29, 2014, <http://www.sec.gov/News/PublicStmt/Detail/PublicStmt/1370541681994>

<sup>11</sup> SEC, Securities and Exchange Act of 1934, Release No. 72079 / May 2, 2014, File No. S7-40-10, Order Issuing Stay. <http://www.sec.gov/rules/other/2014/34-72079.pdf>

<sup>12</sup> SEC, Dodd-Frank Wall Street Reform and Consumer Protection Act Frequently Asked Questions – Conflict Minerals, April 7, 2014. <http://www.sec.gov/divisions/corpfin/guidance/conflictminerals-faq.htm>

<sup>13</sup> Yin Wilczek, SEC Official Offers Three Pointers on Issuers' Conflict Mineral Disclosures, BNA, September 19, 2014. <http://www.bna.com/sec-official-offers-n17179895108/>



Relatively simple data analysis was applied, generating descriptive statistics including proportions, ratios, and measures of central tendency. The point system in this compliance-based section, and hence the companies' scores, was not weighted.

ii. "Good practice" instrument

RSN/Sustainalytics, in its report *Mining the Disclosures: An Investor Guide to Conflict Minerals Reporting* took a positive deviance approach in their assessment of filings, identifying "good" and "bad" practices that stand out and judging the other filers accordingly. RSN/ Sustainalytics uses the term "best practice" with respect to practices that RSN considers exemplary. The term "best practice," however, should rather be reserved for practices that have been vetted by a group of experts who, applying criteria, agree to elevate one among many "good practices" to a "best practice." Another issue concerns the nature of RSN/ Sustainalytics' "good practices." Are the elevated good practices inherently know-how-oriented to better conduct RCOI and due diligence, or are these ethical sourcing standards? In light of these questions, we place the term "good practice" in parentheses. As RSN/Sustainalytics' indicators call for some practices not required under the SEC Rule, their indicators exceed the minimum mandatory requirements.



Also, the RSN/Sustainalytics indicators do not substantively differentiate between Form SD filers and Form SD + CMR filers, only applying a differing weighting scheme to each filer type. On page 37 of "Mining the Disclosures" RSN/Sustainalytics states:

*It was decided to include the SD-only filers because their actual exposure to 3TG does not materially differ from most CMR-filers, and their exposure to minerals from the DRC region could change from year to year, assuming the company does not institute a devastating embargo policy against the region. SD-only filers still have product lines that use 3TG and rely on supplier engagement to determine whether their necessary conflict minerals were sourced in the covered countries. Therefore, companies are expected to conduct and disclose a similar quality of due diligence regardless of the findings of their Reasonable Country of Origin Inquiry (RCOI). Regulators should be careful not to incentivize avoidance of filing a CMR by applying less scrutiny to companies that only filed a Form SD.*

A few comments here. It is very possible that any given filer's exposure to minerals from the DRC region would materially differ from that of another. In 2012, for example, the DRC's share of the world's tantalum and tin production amounted to 12% and 2%, respectively.<sup>14</sup> According to the USGS, in 2012 Australia, Bolivia, Brazil, China, Indonesia, and Peru each produced more

---

<sup>14</sup> U.S. Geological Survey, 2012 Minerals Yearbook CONGO (KINSHASA) [ADVANCE RELEASE], June 2014. <http://minerals.usgs.gov/minerals/pubs/country/2012/myb3-2012-cg.pdf>

tin than the DRC (not including U.S. production).<sup>15</sup> While the upstream 3TG supply chain is indeed complex, and at the SOR level material originating from various countries may be mixed, in some cases, e.g. a vertically integrated sourcing operation, the non-DRC origin is obvious. For reporting year 2013, 77% of filers submitted a CMR, 23% of filers did not. Thus, one should be cognizant of the fact that a company whose necessary product(s) do(es) not contain 3TG sourced from the covered countries is a case that has a significantly reduced reporting mandate – the Form SD alone. If one does not differentiate between Form SD filers and Form SD + CMR filers, one is comparing apples and oranges with the same metric.



Even in the instance where – in principle – the indicator would not apply to the particular case of the filer, we nevertheless applied the indicator as intended by RSN/Sustainalytics. We also left the RSN/Sustainalytics indicators intact when subjectivity or interpretation was required in their application. As intended and designed by RSN/Sustainalytics, any given company could theoretically receive a perfect score of 100 points. While neither RSN/Sustainalytics' *Mining the Disclosures* nor their *Indicators Longlist* publications indicate the specific point system they applied to their assessment of the 100 companies' filings, since it was stated that there were 100 possible points we devised and implemented an approximate point system. Their weighting scheme – which assigns a different weight based on whether the filer was an SD-only filer or a CMR filer, as explained on Page 37 of the *Mining the Disclosures* report – was applied. Please see *Appendix D* for a listing of the “good practice” indicators, reproduced from the *Indicators Longlist* published by RSN/Sustainalytics.

In order to present stakeholders two distinct evaluation perspectives, this study juxtaposes the RSN/Sustainalytics' “good practice” score with the compliance-focused score (see *Appendix E: Scores*). However, in breaking with RSN/Sustainalytics' method, no “good practice” score was awarded to Form SD-only filers.

### iii. IPSA instrument

The Independent Private Sector Audit (IPSA) is an additional step some issuers took for reporting year 2014 although it was not required in the SEC Rule except in limited circumstances.<sup>16</sup> The IPSA comprises an additional measure companies took to provide assurance from an independent third party that: (1) the issuer's due diligence framework is designed in conformity with the relevant nationally or internationally recognized due diligence

---

<sup>15</sup> U.S. Geological Survey, 2013, Mineral commodity summaries 2013: U.S. Geological Survey, 198 p. <http://minerals.usgs.gov/minerals/pubs/mcs/2013/mcs2013.pdf>

<sup>16</sup> To date, while stakeholders await a resolution to the 1<sup>st</sup> Amendment issue raised in the NAM vs. SEC lawsuit, the SEC's April 29, 2014 administrative stay still stands allowing companies the option of using – or not using – the specific product determination phrases. In the event, however, that the issuer used the “DRC Conflict Free” determination in its CY2014 filing, the IPSA requirement was triggered.

framework and (2) that the issuer actually performed the due diligence measures as they were described. Since the IPSA was technically a compliance requirement for certain filers in reporting year 2014 and is concerned with validating particular steps in a company's exercise of due diligence, it is relevant to this evaluation's overall compliance focus.

Furthermore, as for reporting year 2015 the "DRC Conflict Undeterminable" designation may no longer be used according to the original writing of the SEC Rule, and in the absence of drastic legal or political interventions, filers will need to report that their products are either "DRC Conflict Free" or "not been found to be 'DRC conflict free.'" In the event of either determination status, an IPSA is triggered when any material is sourced from the Covered Countries.<sup>17</sup> Affected issuers will be required to obtain and disclose the IPSA as a part of its CMR. Going forward, as, *ceteris paribus*, many more companies will be procuring an IPSA for reporting year 2015, it is of interest to assess the basic characteristics of the 6 IPSAs that were completed for reporting year 2014.



We selected nine points as "criteria," derived from the Generally Accepted Government Auditing Standards (GAGAS),<sup>18</sup> which all 6 IPSAs reference as a standard (see section *F. IPSA filings*).

#### ***D. Evaluation team and data quality control***

Quality data starts with quality people. A team of nine Tulane University Juris Doctor candidates and recent graduates led by the author comprised the core evaluation team. First, the evaluators were briefed on the law, rule and evaluation methodology at hand to ensure that evaluators combed through the filings with the same perspective and exacting precision. Thereafter, mock evaluations in plenary were held to practice the evaluation logic and process. The group was divided into two cohorts, each group headed by a coordinator. A redundancy factor of 10% was built into the data collection process which enabled verification and data quality control of each evaluator's work. As an additional measure to ensure evaluation uniformity the coordinators spot-checked the evaluated filings along the way. Also, questions were posed and answered on an online forum. Throughout the month-long evaluation data collection, weekly team meetings were held to review questions and calibrate approaches and interpretation.

---

<sup>17</sup> If, however, upon the performance of due diligence, the company determines that there are actually no CCs in their supply chain, an IPSA is not needed. It is thus likely that most CMR filers next year will require an IPSA.

<sup>18</sup> United States Government Accountability Office, Government Auditing Standards, GAO-12-331G: Published on Dec 1, 2011, Revised on January 20, 2012. <http://www.gao.gov/assets/590/587281.pdf>

## ***E. Challenges***

The main challenge facing the evaluation was the difficulty assessing a company's degree of compliance in light of the disclosure leeway permitted due to the April 14, 2014 First Amendment ruling of the U.S. Court of Appeals for the District of Columbia Circuit.<sup>19</sup> Prior to the SEC's statement of April 29, 2014, the rule was written such that companies were required to use the determinations "DRC conflict free," "not been found to be 'DRC conflict free,'" or "DRC conflict undeterminable." Depending on the particular determination, an issuer was required to disclose certain aspects of their conflict mineral program.



However, shortly before the first filings were due (on June 2, 2014 for reporting year 2013), as per SEC's statement of April 29, 2014, companies were not required to use the "DRC conflict free," "not been found to be 'DRC conflict free,'" or "DRC conflict undeterminable" determination labels.<sup>20</sup> As a consequence, while some companies opted to nevertheless explicitly state the determination labels, others did not.

Furthermore, according to the SEC rule, the filing's determination carried with it certain requirements. If the product(s) was/were found to be "DRC conflict free", the product(s) needed to be described, and the issuer was to have an IPSA performed. Other requirements, as well, were conditional. The requirement of mentioning steps to improve due diligence was predicated on the "DRC conflict undeterminable" status. Unless the issuer was "DRC conflict free", it needed to list the facilities (SORs) used to process the necessary conflict minerals in those products, disclose the country/ies of 3TG origin, and disclose the efforts to determine the mine or location of origin. Non-use of the determination labels did not exempt a company from complying with the requirements. Notably, the Order Issuing Stay of May 2, 2014 states that the stay is limited to "... those portions of the rule requiring the disclosures that the Court of Appeals held would impinge on issuers' First Amendment rights."<sup>21</sup>

Thus, for the sake of being able to assess the company's degree of compliance with these requirements, its determination language was matched with the appropriate determination category even when a company did not use an explicit determination label. For example, if a company stated "we do not have sufficient information to determine if the necessary conflict minerals in our products are 'DRC conflict free,'" it implies that its products are "DRC conflict

---

<sup>19</sup> See Michael V. Seitzinger and Kathleen Ann Ruane, Conflict Minerals and Resource Extraction: Dodd-Frank, SEC Regulations, and Legal Challenges, Congressional Research Service, April 2, 2015. <http://fas.org/sgp/crs/misc/R43639.pdf>

<sup>20</sup> SEC, Statement on the Effect of the Recent Court of Appeals Decision on the Conflict Minerals Rule, April 29, 2014. <http://www.sec.gov/News/PublicStmnt/Detail/PublicStmnt/1370541681994>

<sup>21</sup> The full sentence in the Stay reads: "Moreover, limiting the stay to those portions of the rule requiring the disclosures that the Court of Appeals held would impinge on issuers' First Amendment rights furthers the public's interest in having issuers comply with the remainder of the rule, which was mandated by Congress in Section 1502 and upheld by the Court of Appeals."

SEC, Securities and Exchange Act of 1934, Release No. 72079 / May 2, 2014, File No. S7-40-10, Order Issuing Stay. <http://www.sec.gov/rules/other/2014/34-72079.pdf>

undeterminable” without using the *specific term*. Alternatively, if a company stated: “we have found no reason to believe that the conflict minerals used in our covered products support conflict in the covered countries” it conveyed an interpretation that the product was “DRC Conflict Free.” Thus, in cases where the determination labels were not used, it was necessary to interpret the conclusional statement of companies, match the language with the appropriate determination category, and thereafter apply the particular compliance criteria in line with the requirements under the SEC Rule. In sum, as a given determination category informed the particular filing requirements, the filer was assessed against the applicable filing requirements – whether or not the explicit determination labels were used.



#### ***F. Independence of author and competing interests***

The author reserved the right to have the last word on the evaluation’s approach, research design and indicators, the study was designed *ex novo* by the author, and the data were collected and the report written without input on the part of the study’s Advisory Panel or the study’s funder.

The author declares that he has no competing interests or a conflict of interest in duly carrying out this evaluation. He does not directly hold stock nor knowingly hold stock through any funds, neither of evaluated companies nor in the entities making up the study’s Advisory Panel and the study funder. In sum, he had no known vested interests vis-à-vis the findings of this study.

## **V. Findings**

### ***A. RY 2014 vs. RY 2013 comparison***

For reporting year 2014, 1,266 unique filers submitted a conflict mineral disclosure to the SEC as of July 17, 2015.<sup>22</sup> While this number of filers represents a decline from last year’s 1,321 filers, we also identified 57 “new” filers. These differences are also indicative of dynamic markets in which many mergers, acquisitions, consolidations and privatizations occurred during reporting year 2014.

---

<sup>22</sup> While the total number of unique filers came to 1,267 issuers, for this study’s purposes we did not assess 5 companies whose Form SDs simply referred to filings of their subsidiary/ies. Thus, the total number of evaluated companies came to 1,262 filers.



**B. RY 2014 filer profile**

Three-quarters (77%) of the 1,267 filers are manufacturers (see Table 1 and 2 and Figure 1 below). Among manufacturers, the *Semiconductors & Related Devices* companies comprise the largest cohort, which however make up only 12% of the total pie. A total of 270 SIC codes are represented in the entire group. That said, as the *Primary SIC* is self-reported by the company, even a greater diversity of manufacturing output is likely affected by the law.

**Table 1: SIC Division**

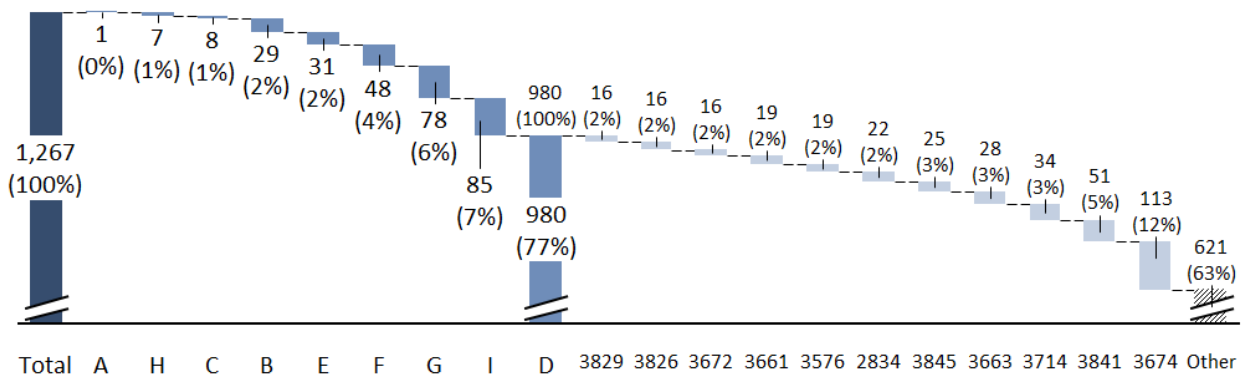
Division Code	SIC Division	count
D	Manufacturing	980
I	Services	85
G	Retail Trade	78
F	Wholesale Trade	48
E	Transportation, Communications, Electric, Gas, & Sanitary Services	31
B	Mining	29
C	Construction	8
H	Finance, Insurance, & Real Estate	7
A	Agriculture, Forestry, & Fishing	1
<b>Total</b>		<b>1267</b>

**Table 2: Manufacturing Industry**

Primary SIC	Manufacturing Industry	count
3674	Semiconductors & Related Devices	113
3841	Surgical & Medical Instruments & Apparatus	51
3714	Motor Vehicle Parts & Accessories	34
3663	Radio & TV Broadcasting & Communications Equipment	28
3845	Electromedical & Electrotherapeutic Apparatus	25
2834	Pharmaceutical Preparations	22
3661	Telephone & Telegraph Apparatus	19
3576	Computer Communications Equipment	19
3829	Measuring & Controlling Devices, NEC	16
3826	Laboratory Analytical Instruments	16
3672	Printed Circuit Boards	16
other	other	621
<b>Total</b>		<b>980</b>

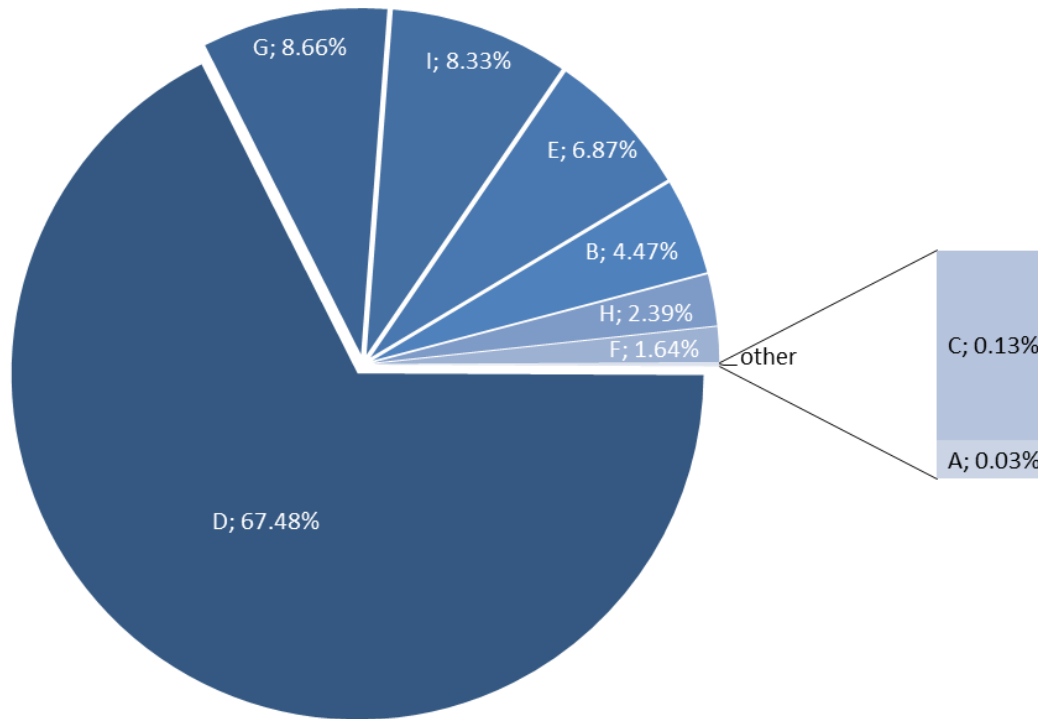


**Figure 1: SIC division and industry**



The 1,267 filers had a combined market capitalization of just about \$16 trillion (see *Figure 2* and *Table 3* below). The law is thus impacting public companies generating significant capital formation.

*Figure 2: Market capitalization (in billion) – End of May 2015*

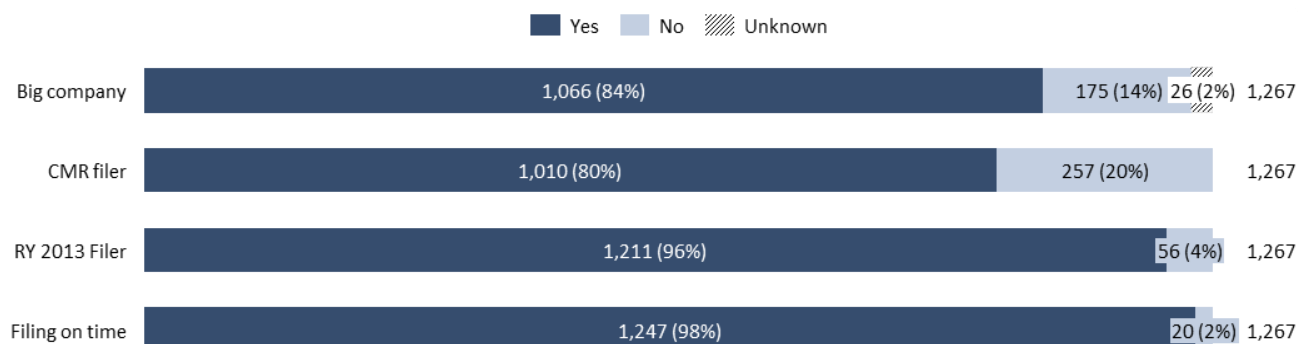


*Table 3: Market capitalization (in billion) – End of May 2015*

Division Code	SIC Division	sum (bn)
D	Manufacturing	10,467
G	Retail Trade	1,643
I	Services	1,324
E	Transportation, Communications, Electric, Gas, And Sanitary Services	1,070
B	Mining	714
H	Finance, Insurance, And Real Estate	380
F	Wholesale Trade	262
C	Construction	21
A	Agriculture, Forestry, And Fishing	4
<i>Total</i>		<i>15,887</i>

For the most part, larger reporting companies – defined by the SEC as a company with more than \$75 million of public equity float – comprised the total filing group (see *Figure 3* below). “Small” companies made up 14% of the group. One fifth of all the filers filed a Form SD only, and four fifths of all filers filed a Conflict Mineral Report. Ninety-six percent (96%) of issuers had already filed for reporting year 2013, and 98% of issuers filed on time.

*Figure 3: Big vs. small company, filer type, RY 2013 filer, filing date*



### C. Determinations

In all, we found five basic determination categories for reporting year 2014:<sup>23</sup>

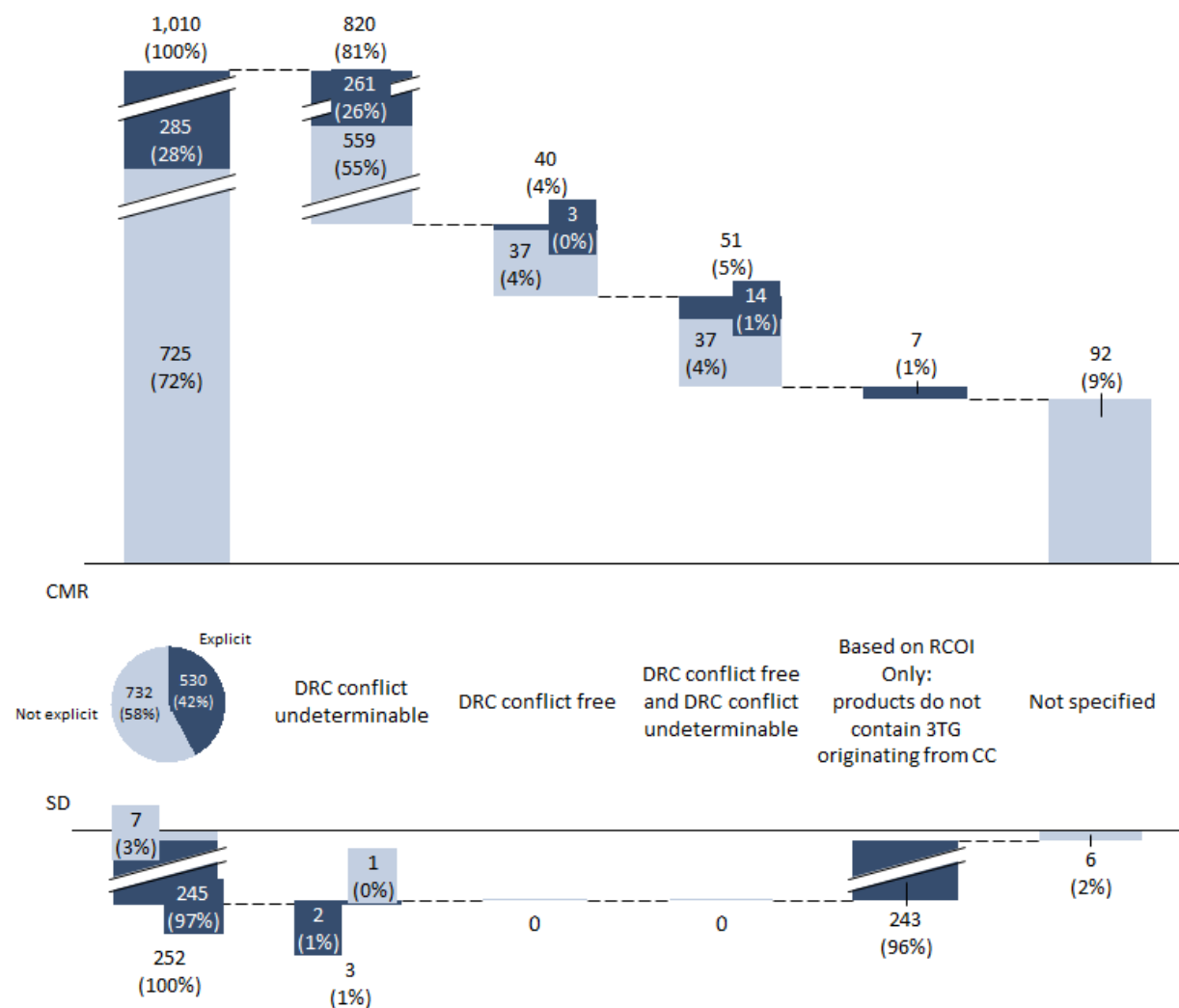
- Not specified
- "DRC conflict undeterminable," whether implicit (without determination labels) or explicit
- "DRC conflict free," whether implicit (without determination labels) or explicit
- "DRC conflict free" and "DRC conflict undeterminable," whether implicit (without determination labels) or explicit
- Based on RCOI only: products do not contain necessary 3TG originating from Covered Countries

As determinations are product-level, different products can have different determinations. For example, the determination "DRC conflict free and DRC conflict undeterminable" would arise when a company determined that some products linked to its 3TG supply chain, containing e.g. gold, was definitely "DRC conflict free," whereas other products, containing e.g. tin, was "DRC conflict undeterminable."

<sup>23</sup> In next year's filing (reporting year 2015) the "DRC Conflict Undeterminable" designation may no longer be used according to the SEC Rule as originally written, unless the filer is a "smaller" reporting company according to the SEC definition. Either the determination "DRC Conflict Free" or "not DRC Conflict Free" must be used next year as per the original rule. Meanwhile, affected companies await a resolution to the 1<sup>st</sup> amendment issue raised in the NAM vs. SEC lawsuit.

Given that reporting year 2014 was still within the SEC-decreed temporary period, the majority of filers (65%) concluded that the 3TG contained in their product(s) was DRC conflict undeterminable. Problematic, however, is that 98 filers did not state any determination or conclusion. Although they were not required to use the explicit determination labels, filers were required to disclose a determination, at a minimum to identify the relevant CMR contents that apply to them.

Figure 4: Determinations



For reporting year 2014, the use of explicit determination labels – the “magic words” – was not required. Fifty-eight percent (58%) of filers chose not to use explicit determination labels. Also of note was that 40 filers implied that their product(s) was/were “DRC conflict free.” Yet the practice of even implicitly declaring ones product(s) “DRC conflict free” without having an IPISA

performed was discouraged by Keith Higgins, the Director of the Securities and Exchange Commission's Division of Corporation Finance, who on Sept. 12, 2014 advised companies which within the 2-year temporary period do not opt to label their products as conflict-free to avoid disclosure language suggesting such.<sup>24</sup>

Seven (7) Form SD + CMR filers explicitly stated that their product(s) was/were “DRC conflict free,” although only six (6) companies filed a CMR containing an IPSA.<sup>25</sup>



#### ***D. Form SD-only filers***

The 258 Form SD-only filers were evaluated based on 6 SEC-required criteria. The Form SD was to include a:

1. Conclusional statement
2. Description of RCOI undertaken to produce conclusional statement
3. Working URL to the Form SD on the company's web site
4. Description of due diligence if the issuer had "reason to believe" RCOI yields 3TG possibly from DRC
5. Signature of an Executive Officer

Sixth (6.), it was to be filed on time.

On the whole, the Form SD-only filer findings indicate a strong compliance with the 6-point criteria (see *Figure 5* below). One notable shortcoming of more than a fifth of filers is that the URL on the Form SD to their web site was either not provided or not working.

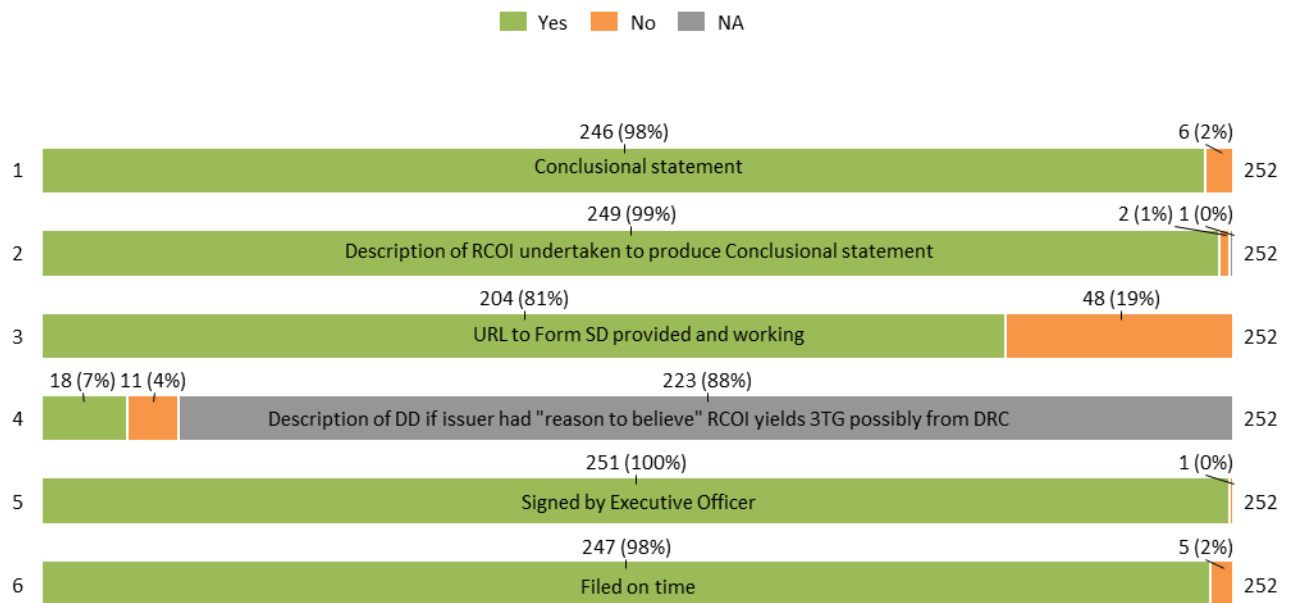
---

<sup>24</sup> Keith Higgins stated: “Obviously, if you say [your product is] conflict-free, you have to provide an independent private sector audit, so nudging up close to that with some implied statement is probably not a good idea.” Yin Wilczek, SEC Official Offers Three Pointers on Issuers’ Conflict Mineral Disclosures, BNA, September 19, 2014. <http://www.bna.com/sec-official-offers-n17179895108/>

<sup>25</sup> Of all the explicitly labeled “DRC conflict free” filings, the only one without a concurrent IPSA was Zoom Telephonics (CIK 1467761). All of Zoom’s suppliers claimed, according to Zoom’s CMD, that they did not source 3TG from “Conflict Areas of the DRC” and they all claim to have DD in place to prevent any importation of such. The issue here is that use of the explicit “DRC conflict free” label – as per the SEC Statement of April 29, 2014 – is reserved for companies that had an IPSA performed.



**Figure 5: Results of Form SD-only filers based on 6 compliance-based criteria**



Plotting the scores of the Form SD-only filers on a histogram produces the graph in *Figure 6* and displaying their scores as percentiles yields *Figure 7*. 75% of Form SD-only filers had 100% compliance, and 97% of Form SD-only filers were at or above the 75% compliance mark. In all, Form SD-only filers averaged a compliance score of 94%.

**Figure 6: Form SD-only filer score, histogram**

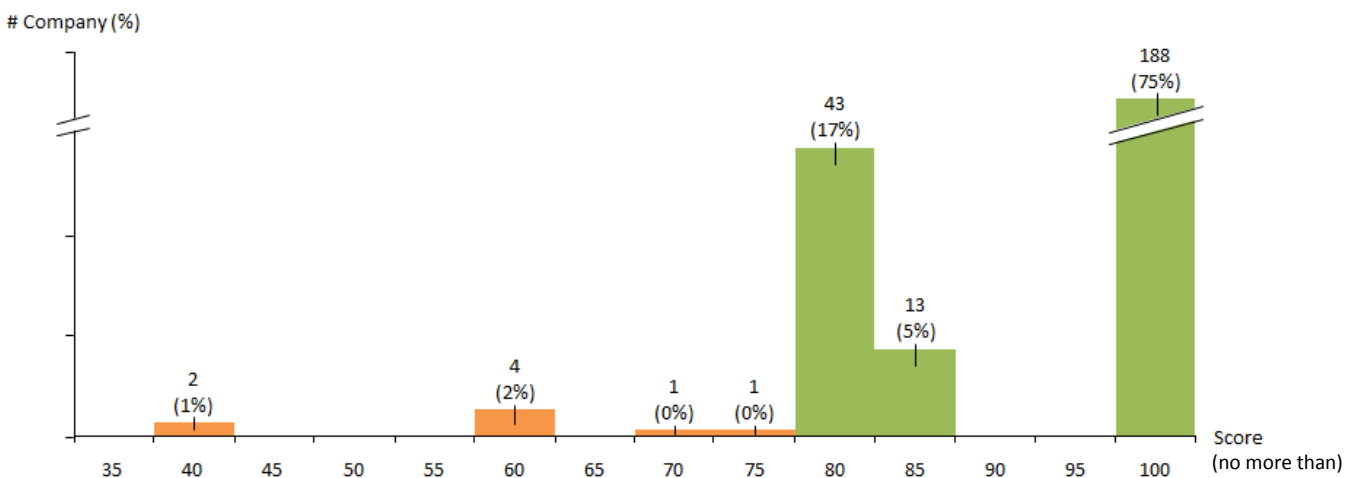
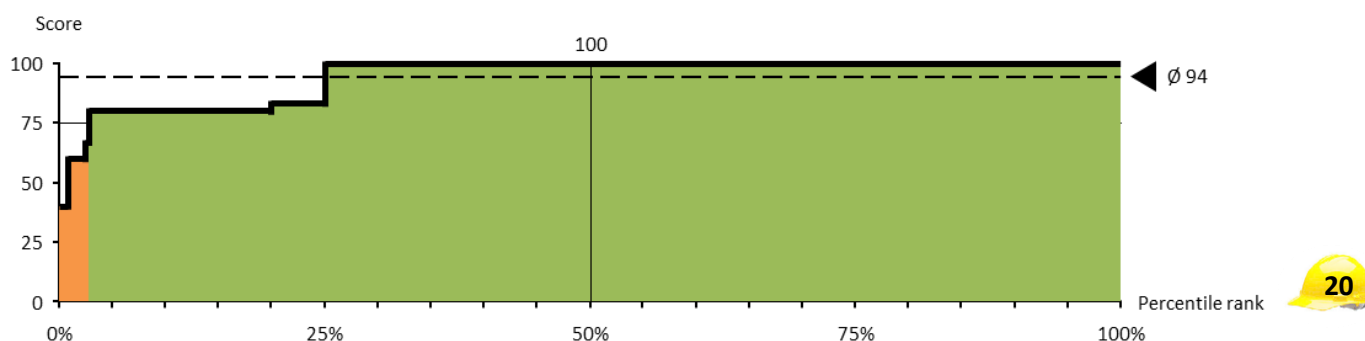


Figure 7: Form SD-only filer score, percentile rank



### **E. Form SD + CMR filers**

The 1,010 Form SD + CMR filers were evaluated based on the SEC Rule-derived 15-point criteria. The Form SD + CMR was to feature:

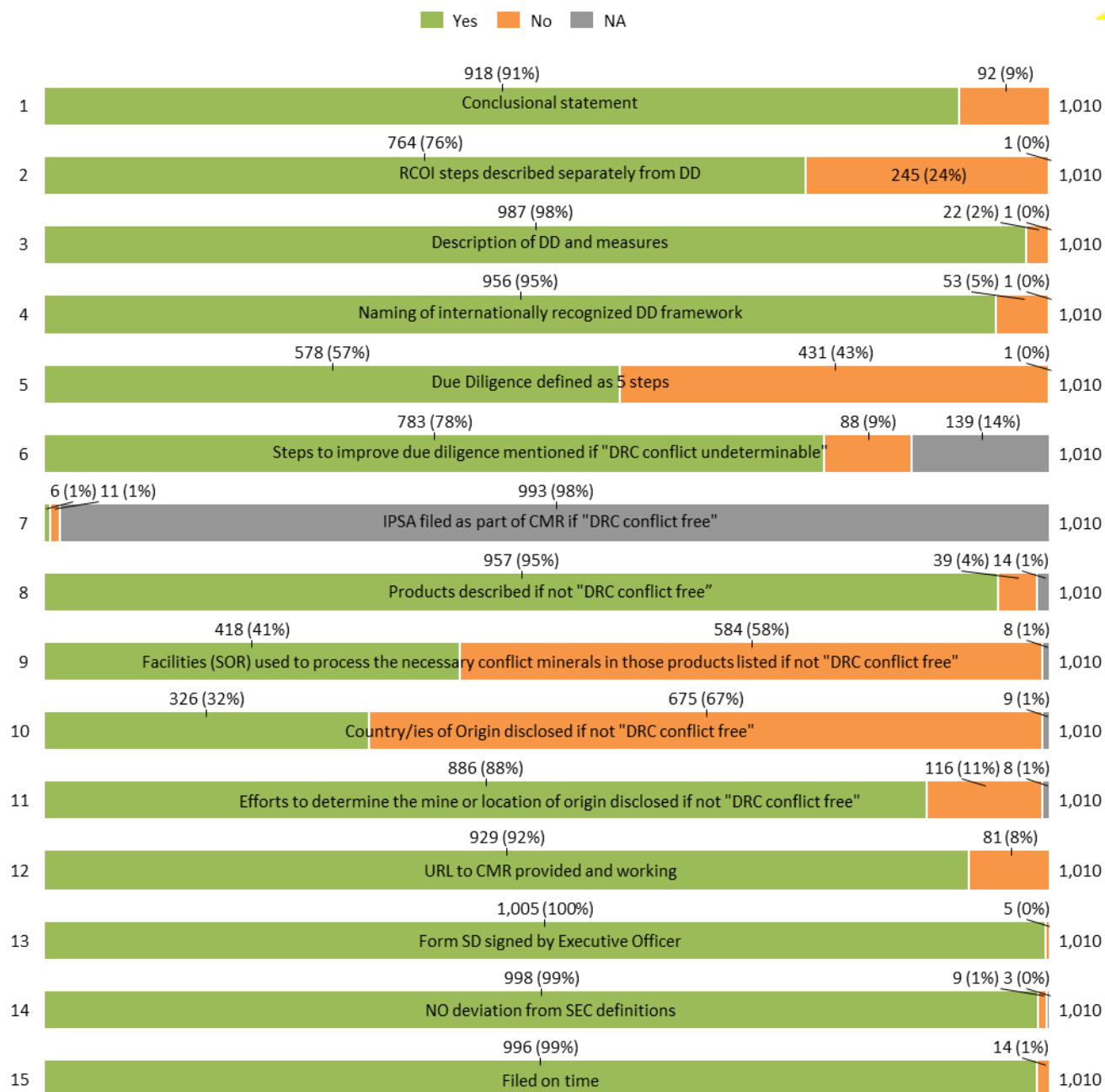
1. Conclusions statement
2. Description of RCOI steps separately from due diligence
3. Description of due diligence and measures
4. Naming of internationally recognized due diligence framework
5. Definition of due diligence as 5 steps
6. Mentioning of steps to improve due diligence (if "DRC conflict undeterminable")
7. Performance of an IPSA (if "DRC conflict free")
8. Description of products (if not "DRC conflict free")
9. Identification of SOR Names (if not "DRC conflict free")
10. Identification of country/ies of origin (if not "DRC conflict free")
11. Disclosure of efforts to determine the mine or location of origin (if not "DRC conflict free")
12. Working URL to CMR on filers web site
13. Signature of an Executive Officer

Lastly, the filing was (14.) not to deviate from SEC definitions, and (15.) to be filed on time.

As *Figure 8* below illustrates, our evaluation of Form SD + CMR filers produced mixed results. On the one hand, most issuers filed on time, very few deviated from the SEC definitions, most Form SDs were signed by an Executive Officer, an internationally recognized due diligence framework was cited, and the companies' due diligence measures were described. On the other hand, the most noticeable shortcoming was that more than half of the filers did not disclose the country/ies of 3TG origin. Almost half of the filers did not disclose the facilities

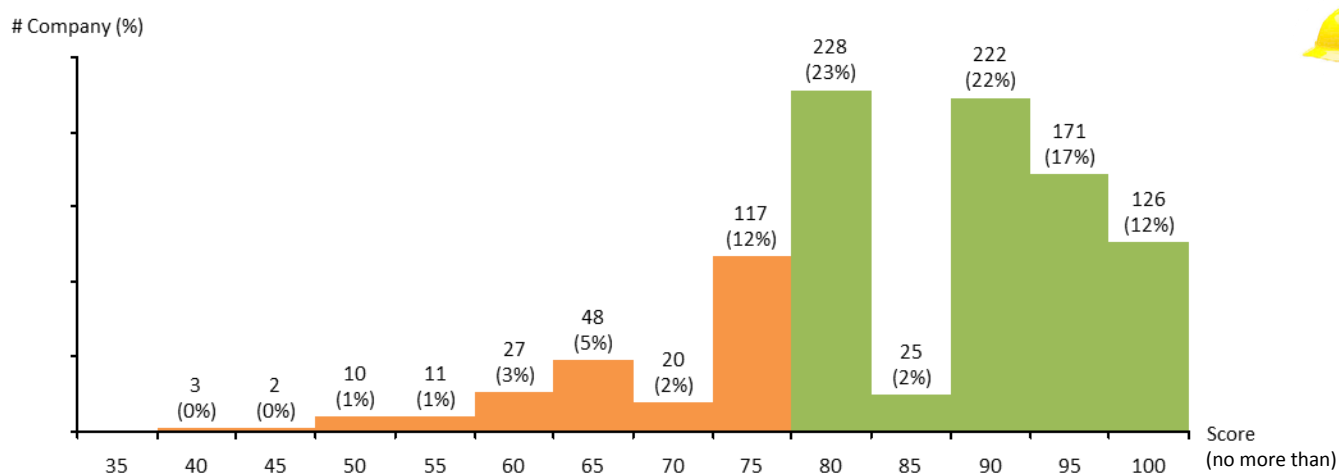
used to process the necessary 3TG. Many companies also did not define due diligence as five steps or describe the Reasonable Country of Origin Inquiry (RCOI) steps separately from due diligence. While some of these gaps are ostensibly due to current limitations in the availability of 3TG supply chain data, other gaps point to insufficient disclosure of information.

*Figure 8: Results of CMR filers based on 15 compliance-based criteria*

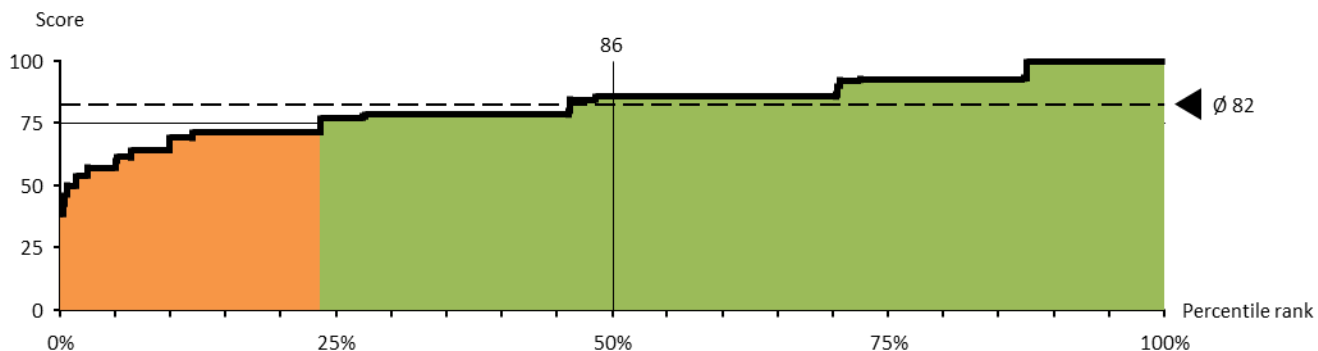


Also the scores of SD + CMR filers are plotted onto a histogram (see *Figure 9*) and according to percentile rank (see *Figure 10*). 12% of Form SD + CMR filers had 100% compliance, and 76% were at or above the 75% compliance mark. In all, SD + CMR filers averaged a compliance score of 82%.

*Figure 9: Form SD + CMR filer score, histogram*



*Figure 10: Form SD + CMR filer score, percentile rank*



### 3. Additional information contained in the CMD

Forty-seven percent (47%) of filers reported a response rate as part of their CMD (see *Table 4* below). Of these, the average reported response rate was 81%. There however was a broad range of supplier response rates, anywhere from 13% to 100%. Also, issuers' disclosures reveal that 66% of SORs in their supply chains were audited in reporting year 2014.

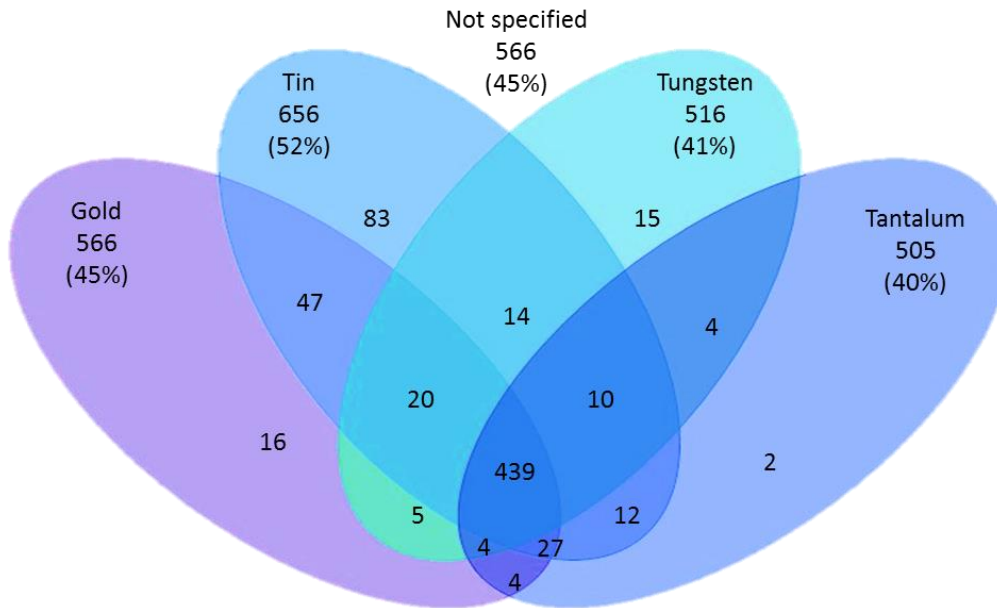
*Table 4: # of suppliers, % of audited SORs, and supplier response rate*

<i>indicator</i>	<i>observations (n)</i>	<i>average</i>	<i>min</i>	<i>max</i>
number of 3TG-relevant suppliers	495	500	1	10,000
% of audited SORs in supply chain	112	66%	2%	100%
Supplier response rate (CMRT)	591	81%	13%	100%



Some companies also reported the precise 3TG which their product(s) contained. The Venn diagram in *Figure 11* below indicates that the majority of firms who mentioned their 3TG consumption handle all four 3TGs.

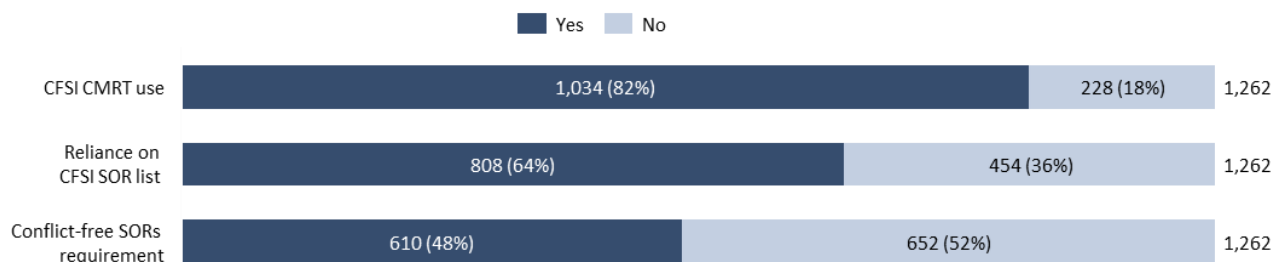
*Figure 11: 3TG minerals in products*



As illustrated in *Figure 12* below, 82% of filers used the Conflict-Free Sourcing Initiative (CFSI)'s conflict mineral reporting template (CMRT). A smaller percent (64%) of companies relied on the CFSI's SOR list, and almost half of issuers (48%) required or expected their suppliers to source from conflict-free audited/verified SORs.



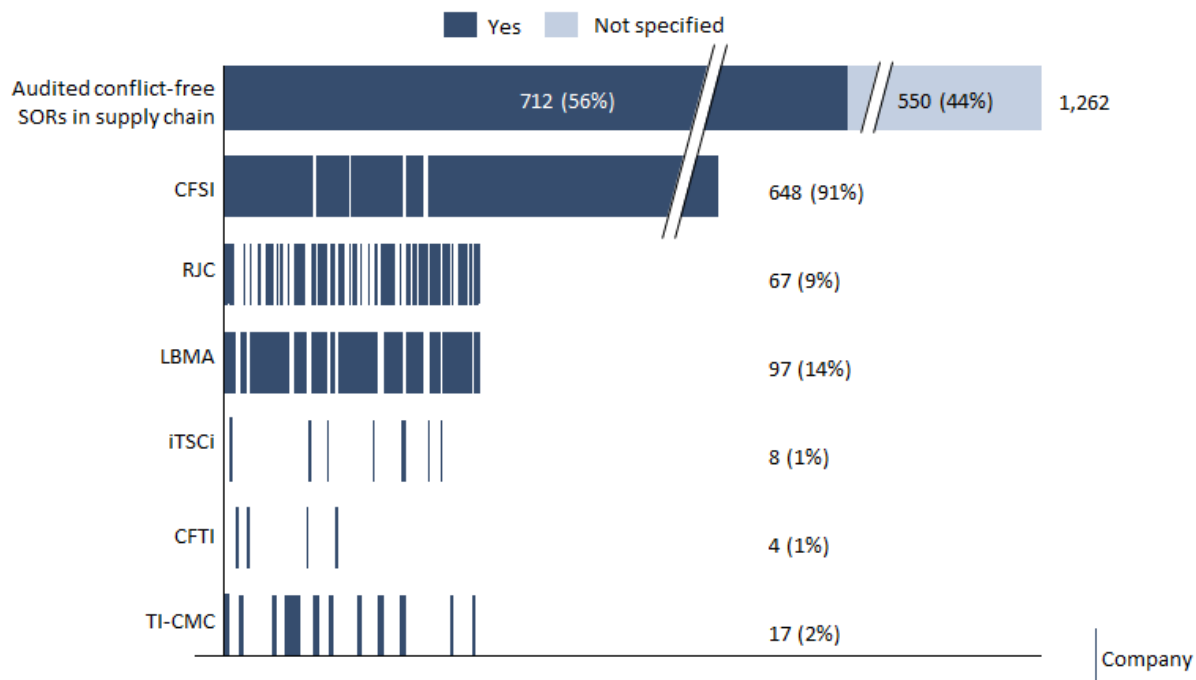
Figure 12: CFSI CMRT use, reliance on CFSI SOR list, and sourcing requirements



Two thirds of filers (66%) reported that their supply chains included one or more conflict-free SORs (see *Figure 13* below). Six verification bodies were mentioned:

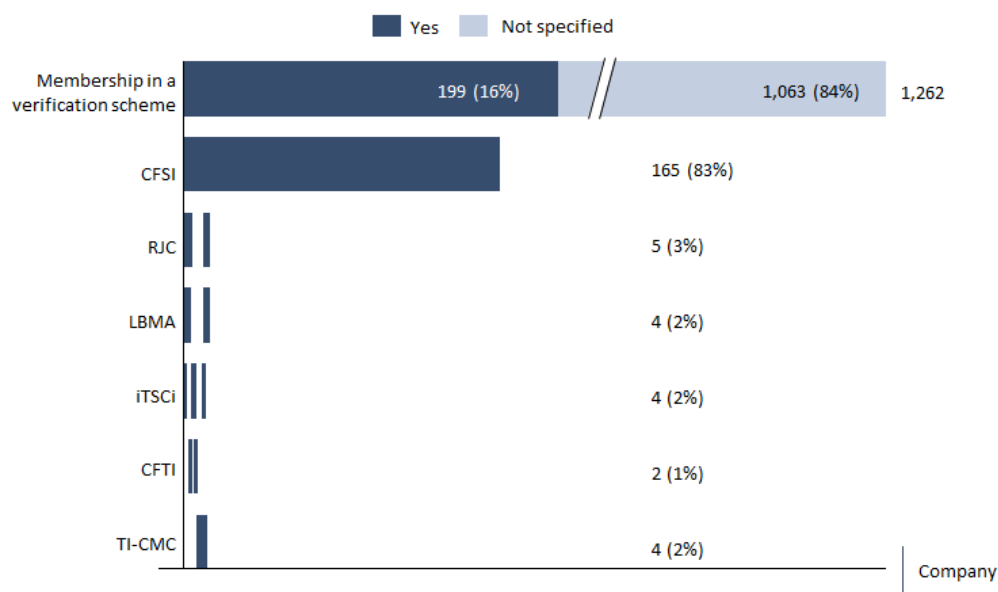
- Tungsten Industry—Conflict Minerals Council (TI-CMC)
- Conflict Free Tin Initiative (CFTI)
- iTSCi (ITRI Tin Supply Chain Initiative)
- London Bullion Market Association (LBMA)
- Responsible Jewellery Council (RJC)
- Conflict-Free Sourcing Initiative (CFSI)

Figure 13: Reported number of audited conflict-free SORs in supply chain



Yet only 16% of the filers noted that they were also a member of such an audit/verification scheme (see *Figure 14* below).

Figure 14: Membership in an audit/verification scheme



**F. IPSA filings**

Given that the IPSA was a compliance requirement for certain filers in reporting year 2014, and that IPSAs will be a common feature of filings submitted next year, we thought it appropriate to conduct a short baseline analysis of the 6 IPSAs that were completed for reporting year 2014.

We selected nine points as “criteria,” derived from the Generally Accepted Government Auditing Standards (GAGAS),<sup>26</sup> which incidentally all 6 IPSAs reference as a standard. These nine points comprise seven which are non-contingent – an IPSA should state the (1) standards that were used, (2) audit objectives, (3) matters IN scope, (4) matters OUT of scope, (5) audit methodology, (6) level of assurance, (7) audit results – and two points applicable only in certain circumstances – (1) summary of views of responsible officials if the company provided comments on the audit report, and (2) the nature of confidential or sensitive information that may have been used by the auditor but omitted from the report. These criteria were then applied to each IPSA, however keeping in mind the difference between Attestation Engagements (AEs) and Performance Audits (PAs).

As depicted below in *Table 5*, three companies opted to have Attestation Engagements performed, which are conducted by CPAs, and three companies had Performance Audits performed, which may be conducted by non-CPAs. Our analysis yields that all six IPSAs fulfill each of the 7 “criteria,” and that neither of the two conditional criteria were applicable.

<sup>26</sup> United States Government Accountability Office, Government Auditing Standards, GAO-12-331G: Published on Dec 1, 2011, Revised on January 20, 2012. <http://www.gao.gov/assets/590/587281.pdf>

Table 5: Analysis of IPSAs filed with SEC for reporting year 2014

	Indicator	Advanced Semiconductor Engineering	AVX	Intel	Kemet	Philips	Signet
IPSA profile	Audit Firm	KPMG	Elm Sustainability Partners	Ernst & Young	Douglas Hileman Cons. LLC	KPMG Accountants N.V.	SGS
	CPA or Non-CPA	CPA	Non-CPA	CPA	Non-CPA	CPA	Non-CPA
	Audit firm also the client's financial auditors?	No	NA	Yes	NA	Yes	/A
	Audit firm country base	China	U.S.	U.S.	U.S.	Netherlands	UK
	Type of IPSA: Attestation Engagement (AE) or Performance Audit (PA)	AE	PA	AE	PA	AE	PA
Report contents	Statement what standards were used?	Yes <sup>27</sup>	Yes <sup>28</sup>	Yes <sup>29</sup>	Yes <sup>30</sup>	Yes <sup>31</sup>	Yes <sup>32</sup>
	Statement regarding audit objectives?	Yes	Yes	Yes	Yes	Yes	Yes
	Statement what is IN scope?	Yes	Yes	Yes	Yes	Yes	Yes
	Statement what is OUT of scope?	Yes	Yes	Yes	Yes	Yes	Yes
	Description of audit methodology?	Yes <sup>33</sup>	Yes	Yes <sup>34</sup>	Yes	Yes <sup>35</sup>	Yes
	Level of assurance designated by the auditor: Reasonable (R), Limited (L)?	Yes: R	Yes: R	Yes: R	Yes: R	Yes: R	Yes: R
	Description of audit results?	Yes	Yes	Yes	Yes	Yes	Yes
	Summary of views of responsible officials (if applicable)	NC	NC	NC	NC	NC	NC
Additional information	Nature of confidential or sensitive information omitted (if applicable)	NA	NA	NA	NA	NA	NA
	Statement regarding management's responsibilities vis-à-vis its conflict minerals program?	Yes	Yes	Yes	Yes	Yes	Yes
	Name of lead auditor stated?	No	No	No	Yes	No	Yes
Auditor's credentials indicated?	NA <sup>36</sup>	Yes	NA <sup>37</sup>	Yes	NA <sup>38</sup>	Yes	

<sup>27</sup> Generally Accepted Government Auditing Standards (GAGAS)

<sup>28</sup> Ibid

<sup>29</sup> American Institute of Certified Public Accountants (AICPA) and GAGAS

<sup>30</sup> GAGAS

<sup>31</sup> AICPA and GAGAS

<sup>32</sup> GAGAS

<sup>33</sup> Standard language is used is "examining on a test basis"

<sup>34</sup> Ibid

<sup>35</sup> Ibid

<sup>36</sup> Not required for Attestation Engagement reporting

<sup>37</sup> Ibid

<sup>38</sup> Ibid

Table 6 below provides a summary of the company-reported explanation behind its determination. Two of the six IPSA filers reported that all their products were “DRC conflict free,” while four of the six IPSA filers determined that some of their products were “DRC conflict free,” while other products were found to be DRC conflict undeterminable.

Table 6: Explanation underpinning determination – IPSA filers

<i>Filer</i>	<i>Determination</i>	<i>Explanation</i>
AVX	DRC CF-E	In its conclusion, AVX states that it trust its 143 suppliers, all of whom have reported that they source only Conflict Free 3TG. Thus, they claim CF-E.
Signet Jewelers	DRC CF-E	Claims that due to its use of Signet Responsible Sourcing Protocols (SRSPs), it has thoroughly checked its whole supply chain, and all the Covered Countries’ SORs are verified Conflict Free by the CFSP or similar 3 <sup>rd</sup> party group.
Kemet Corporation	DRC CF-E and CU-E	4 of Kemet’s products were CU-E because the Suppliers for those product lines contained unverified SORs. The rest of its products were completely sourced from 3 <sup>rd</sup> party verified SORs and thus, CF.
Advanced Semiconductors	DRC CF-E and CU-E	All packaging and material services products had a completely 3 <sup>rd</sup> party verified supply chain, thus they are CF-E. However, electronics division products had suppliers with SORs that were not verified yet or even in process to be verified, so also CU-E.
Koninklijke Philips NV	DRC CF and CU-E	Philips claims that it is unable to verify all its products’ conflict status as it has not received word back from all 10,000 of their suppliers, must less what SORs those suppliers source from. The conflict-free status of some products is based on the CFSI RCOI report which the CFSI provides to its members.
Intel	DRC CF and CU-E	Per CFSP or similar 3 <sup>rd</sup> party verification organizations, all of Intel’s supply lines for its Chipsets and Microprocessor business is verified conflict free. However, all other products have supply lines that lead to SORs that haven’t even begun verification procedures. More specifically, of 229 SORs, 42 are in process of conflict free verification and 18 have yet to start the process.



## VI. Appendices

### Appendix A: Glossary of acronyms

3TG	Tin, tantalum, tungsten, and gold
AE	Attestation Engagement
AICPA	American Institute of Certified Public Accountants
CC	Covered Countries [Democratic Republic of the Congo (DRC), Central Africa Republic, South Sudan, Zambia, Angola, The Republic of the Congo, Tanzania, Burundi, Rwanda, Uganda]
CFSI	Conflict Free Sourcing Initiative
CFSP	Conflict Free Smelter Program
CFTI	Conflict Free Tin Initiative
CM	Conflict Mineral
CMD	Conflict Mineral Disclosure
CMP	Conflict Mineral Program
CMR	Conflict Mineral Report
CMRT	Conflict Minerals Reporting Template
CPA	Certified Public Accountant
DD	Due Diligence
DRC	Democratic Republic of the Congo
DRC CF	DRC Conflict Free
DRC CF-E	DRC Conflict Free -- Explicit
DRC CU	DRC Conflict Undeterminable
DRC CU-E	DRC Conflict Undeterminable -- Explicit
EICC	Electronic Industry Citizenship Coalition
Form SD	Specialized Disclosure Form
GAGAS	Generally Accepted Government Auditing Standards
GeSI	Global e-Sustainability Initiative
IPSA	Independent Private Sector Audit
iTSCi	ITRI Tin Supply Chain Initiative
LBMA	London Bullion Market Association
NA	Not Applicable
NAM	National Association of Manufacturers
NC	No Comment





OECD	Organisation for Economic Co-operation and Development
PA	Performance Audit
RCOI	Reasonable Country of Origin Inquiry
RSN	Responsible Sourcing Network
RY	Reporting Year
SEC	Securities and Exchange Commission
RJC	Responsible Jewellery Council
SIC	Standard Industrial Classification
SOR	Smelter or Refinery
TI-CMC	Tungsten Industry—Conflict Minerals Council
URL	Uniform Resource Locator
USGS	U.S. Geological Survey

### Appendix B: Criteria for Form SD-only filers

#	criteria	possible answers	notes
1.	Conclusional statement?	Yes, No	While the affected issuers were not required to use the explicit determination labels, all other aspects of the Rule were upheld. Furthermore, in order to demonstrate compliance with the disclosure logic of the Rule, issuers would need to disclose information concerning their particular case and 3TG origin findings.
2.	RCOI undertaken to produce conclusional statement described?	Yes, No	As per the SEC's instructions, affected companies are to disclose the RCOI determination "and briefly describe the reasonable country of origin inquiry it undertook in making its determination and the results of the inquiry it performed."
3.	URL to Form SD provided and working?	Yes, No	A URL in the CMD to the very CMD on the company website was required by the Rule. If the link directly leads the viewer to the CMD, we found the CMD in a matter of minutes without much surfing, a point was awarded.
4.	If issuer had "reason to believe" RCOI yields a 3TG origin possibly from DRC, Due Diligence described?	Yes, No, NA	In the event that an issuer's RCOI yielded reason for belief that its necessary conflict minerals may have originated in the Covered Countries, but the consequent due diligence found that the 3TG in its necessary products did not, in fact, originate in the Covered Countries, its form SD would need to describe that due diligence.
5.	Signed by Executive	Yes, No	The SEC defines an executive officer as follows: "The

	Officer?		term 'executive officer', when used with reference to a registrant, means its president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant. <sup>39</sup>
6.	Filed on time?	Yes, No	On or before June 1 <sup>st</sup> , 2015 for RY 2014.



### Appendix C: Criteria for Form SD + CMR filers

#	criteria	possible answers	notes
1.	Conclusional statement?	Yes, No	While the affected issuers were not required to use the explicit determination labels, all other aspects of the Rule were upheld. Furthermore, in order to demonstrate compliance with the disclosure logic of the Rule, issuers would need to disclose information concerning their particular case and 3TG origin findings.
2.	RCOI steps described separately from DD?	Yes, No	According to the SEC Rule, RCOI is a distinct step separate from the due diligence process, reiterated once more in question (18) of the SEC's FAQ. <sup>40</sup>
3.	DD with description of measures described?	Yes, No	Page 348 of The Rule: "The Conflict Minerals Report must include the following information: (1) Due Diligence: A description of the measures the registrant has taken to exercise due diligence on the source and chain of custody of those conflict minerals." In other words, it would not be enough for a company's due diligence description to stop at the SOR level and ignore the upstream.
4.	Internationally recognized DD framework named?	Yes, No	To date, the only DD framework that meets the SEC's criteria <sup>41</sup> is the OECD Due Diligence Guidance. <sup>42</sup>
5.	Due Diligence defined as 5 steps?	Yes, No	Page 348 of The Rule: "(i) The registrant's due diligence must conform to a nationally or internationally recognized due diligence framework." The OECD framework features 5 steps. Therefore, in order to conform with the OECD framework, it was necessary to

<sup>39</sup> Code of Federal Regulations, Title 17, Chapter II (4-1-09 Edition) § 240.3b-7, Commodity and Securities Exchanges, PT. 240-End, Revised as of April 1, 2009.

<sup>40</sup> SEC, Dodd-Frank Wall Street Reform and Consumer Protection Act Frequently Asked Questions – Conflict Minerals, April 7, 2014. <http://www.sec.gov/divisions/corpfin/guidance/conflictminerals-faq.htm>

<sup>41</sup> The due diligence framework would be (1) nationally or internationally recognized (2) established following due-process procedures, including the broad distribution of the framework for public comment, and (3) consistent with the criteria standards in the Government Auditing Standards established by the Comptroller General of the United States.

<sup>42</sup> OECD (2013), OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition, OECD Publishing. <http://www.oecd.org/daf/inv/mne/GuidanceEdition2.pdf>

			discuss the CMP in relation to the 5 due diligence steps.
6.	If "DRC conflict undeterminable", steps to improve due diligence mentioned?	Yes, No, NA	Fulfilment of this requirement would involve a forward looking statement.
7.	If "DRC conflict free", was IPSA filed as part of CMR?	Yes, No, NA	SEC Statement of April 29, 2014: "... an IPSA will not be required unless a company voluntarily elects to describe a product as 'DRC conflict free' in its Conflict Minerals Report."
8.	If not "DRC conflict free", were products described?	Yes, No, NA	For the purposes of this evaluation, description of individual products or product categories received a point for this criterion.
9.	If not "DRC conflict free", were the facilities (SOR) used to process the necessary conflict minerals in those products listed?	Yes, No, NA	Unless the company found its products to be "DRC conflict free" and underwent an IPSA, it is required to include a smelter/refiner list.
10.	If not "DRC conflict free", was/were the Country/ies of Origin disclosed?	Yes, No, NA	The SEC Rule requires that ALL countries of origin be disclosed, not just covered countries. A distinction is worth noting here: the country where the smelter/refiner is located is not necessarily the country of ore origin.
11.	If not "DRC conflict free", were the efforts to determine the mine or location of origin disclosed?	Yes, No, NA	This criterion is concerned with the disclosure of efforts to determine the mine or location of origin, and not an assessment of the quality of those efforts or the results.
12.	URL to CMR provided and working?	Yes, No	A URL in the CMD to the very CMD on the company website was required by the Rule. If the link directly leads the viewer to the CMD, we found the CMD in a matter of minutes without much surfing, a point was awarded.
13.	Form SD signed by Executive Officer?	Yes, No	The SEC defines an executive officer as follows: "The term 'executive officer', when used with reference to a registrant, means its president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant." <sup>43</sup>
14.	NO deviation from SEC definitions?	Yes, No	For the sake of clarity, if filers noticeably deviated from the definitions of terms as provided in the SEC Rule on page 352 and 353, one point was deducted.
15.	Filed on time?		On or before June 1 <sup>st</sup> , 2015 for RY 2014.

<sup>43</sup> Code of Federal Regulations, Title 17, Chapter II (4-1-09 Edition) § 240.3b-7, Commodity and Securities Exchanges, PT. 240-End, Revised as of April 1, 2009.

## Appendix D: “Good practice” indicators

	<i>Indicator</i>					<i>Total possible points</i>
1.	How thoroughly has the filer described which <b>product(s)</b> requires which <b>mineral(s)</b> ? (Select all that apply)					6
possible answers	a) Products and/or product categories listed. (2 points)	b) Listed minerals used. (2 points)	c) Gave qualitative description of 3TG exposure to products or business. Includes estimates or general statements. (1 point)	d) Specifically quantified 3TG exposure – EX: percent of total products, percent of revenue. (1 point)	e) Gave no description at all. (0 points)	
note						
2.	Did filer use a <b>template</b> in its surveys/ questionnaires to suppliers?					5
possible answers	yes (5 points)	no (0 points)				
note						
3.	<p>Rate quality of Reasonable Country of Origin Inquiry process (<b>RCOI</b>) and attempts to identify location of origin with the “greatest possible specificity.”</p> <p>Here the goal is to understand the process the filer went through to conduct in good faith the required “reasonable” (SEC term) process to determine its RCOI and if a full CMR (Conflict Mineral Report) is required, so it is important that the RCOI be clearly described as an RCOI.</p> <p>This information may be included in the filer’s overall due diligence strategy. Analysts are looking for the label/ID “Reasonable Country of Origin Inquiry” or “RCOI.”</p> <p>For this indicator, analysts will rate the quality of the filer’s RCOI due diligence, which includes efforts to determine location of origin with greatest possible specificity. An exemplary response should include a list of known countries of origin.</p> <p>If the filer “does not have reason to believe” these minerals originated in the DRC or neighboring countries, the filer does not have to file a CMR that shows it has followed the full due diligence framework. However, any filer that files an SD is expected to show the specific steps of its RCOI. (Select only one answer)</p>					5
possible answers	a) Exemplary: Contains all of the elements in a “Thorough” rating, with the addition of the names of all known countries of origin. (5 points)	b) Thorough: Filer discusses its process, including qualitative or quantitative metrics that gives reader insight into its conclusions. Reader clearly understands filer’s reasoning	c) Adequate: Contains some or most of the elements in a “Thorough” rating. Filer describes the basic process it followed to arrive at its RCOI conclusion without	d) Minimal: Reader is left unclear as to the steps filer took to arrive at its RCOI conclusions. Filer offers little to no description of its process. (1 point)	e) No RCOI process described – includes unsupported conclusions. (0 points)	



		for its RCOI conclusion. Makes reference to the rule's requirement to locate mine with "greatest possible specificity" and lists at least partial locations of origin. (4 points)	providing metrics or verifiable details, asserting it has a reasonable basis for its conclusion but leaves reader questioning the methodology. Could also be for cases where there is a partial list of countries of origin, when the RCOI process is not clearly described. (3 points)				
note	This indicator does not make the clear distinction – and require a clear distinction – between the RCOI and the due diligence steps. We thus interpret the phrase "RCOI due diligence" to mean "the filer's RCOI diligence".						
4.	How did filers engage suppliers? (Select all that apply)						8
possible answers	a) Filer communicates its conflict minerals policy to suppliers. (1 point)	b) Filer includes conflict minerals policy in supplier contracts. (2 points)	c) Filer has a method to enforce its policy or take corrective actions with suppliers found to be not in compliance. (2 points)	d) Filer provides training or support in risk mitigation to its suppliers. (2 points)	e) Filer sends out supplier surveys. (1 point)		
note	We added option "f) not specified"						
5.	If surveys were sent to suppliers, how did filer <b>verify survey responses</b> from suppliers? (Select all that apply)						8
possible answers	a) Checked for survey completeness and accuracy – EX: checked (website, policies, etc.) to see that suppliers had corresponding	b) Followed up with those who did not respond or whose responses needed clarification. (2 points)	c) Evaluated suppliers' due diligence processes or policies. (2 points)	d) Listed survey response rate (percentage or number). (1 point)	e) Checked to see that suppliers' smelter lists appear to be accurate and appropriate – EX: crosscheck with		

	policies and/or programs in place to what is stated in its survey responses. (2 points)				comparable suppliers. (1 point)	
note	We added option "f) NA (not specified)"					
6.	Engaging smelters or refiners (midstream): Is filer a <b>member</b> of the Conflict-Free Sourcing Initiative (CFSI) [also known as Conflict-Free Smelter Program (CFSP), Electronic Industry Citizenship Coalition and the Global e-Sustainability Initiative (EICC-GeSi) Extractives Working Group] or other equivalent effort? (Must be engaging with at least one, no extra points for engaging in more than one). Note: No points will be awarded to filers that only used a publicly available list. Many filers used the publicly available information from CFSP/CFSI, but are not members. These are initiatives that depend on support from members to operate. The desired outcome is for more filers to take an active role as supporting members. (Select yes or no.)					5
possible answers						
note	a) Yes (5 points)	b) No (0 points)				
7.	Filer uses <b>publicly available list</b> to crosscheck list of <b>SORs</b> to determine whether it is certified conflict-free. This information will be used to determine how many filers are using a publicly available list to determine conflict-free certification of SORs without actually supporting in an SOR audit scheme. (Select only one answer.)					5
possible answers	a) Yes - uses CFSI/CFSP list or other publicly available list. (5 points)	b) No (0 points)				
note						
8.	Filer explicitly states it has followed the Organization for Economic Cooperation and Development ( <b>OECD</b> ) Due Diligence Framework. Measures compliance with the rule's requirement that the CMR must follow a "nationally or internationally recognized framework." The OECD is currently the only such framework currently in existence, thus the de facto required framework. It has 5 main areas. It is not sufficient to simply mention the five sections; each section must be either the headline of a section or substantiated in some way. Companies must do more than simply refer to the OECD or its 5 sections by name. (Select all that apply.)					5
possible answers	a) Company management systems. (1 point)	b) Identify and assess risk. (1 point)	c) Design and implement strategy to respond to identified risks. (1 point)	d) Carry out independent third-party audit of supply chain due diligence at identified points in the supply chain. (1 point)	e) Report on supply chain due diligence. (1 point)	



note	We added option “f) none”					
9.	The <b>internal risk-management steps</b> the filer has taken are given with sufficient detail. Measures compliance with the OECD Framework’s requirement to create company management systems, identify and assess risk, and design a strategy to respond. (Select all that apply.)					10
possible answers	a) Filer states it has a formal, publicly disclosed, company-wide conflict minerals policy and either describes the policy or includes a link to it, within its CMR. (2 points)	b) Filer specifies internal persons or departments working on its conflict minerals due diligence process. (2 points)	c) Filer states involvement of upper management in the conflict minerals due diligence process. (2 points)	d) Filer describes an ongoing risk-detection system. (2 points)	e) Filer describes a grievance system. (2 points)	
note	We added option “f) not specified”					
10.	Filer has obtained an <b>independent, private-sector audit</b> (IPSA) of its CMR and named the auditor, including contact information, and provided the assurance standard used, and the level of assurance designated by the auditor (reasonable, limited). While the requirement has not yet come into effect, some filers have already obtained the audit. It will not be scored until it is required, however, it is being acknowledged as a best practice in the pilot report. The auditor language “in conformity” or “is consistent” can be acceptable for the indicator assessment a) Reasonable assurance. (Select only one answer.)					/
possible answers	a) Reasonable assurance	b) Limited assurance (when encountering barriers or obstacles)	c) None			
note						
11.	Does the filer provide a <b>hyperlink</b> within the conflict mineral filing that shows the filer has made its filing publicly available? (Select only one answer.)					5
possible answers	a) Exemplary: Link leads to a relevant page of the filer’s website and the page includes a link to the disclosure (as described in guidance) or Link leads to a page where the full text of the SD/CMR is incorporated into the page	b) Adequate: Static link directly to the conflict mineral disclosure (Not SEC/EDGAR). (4 points)	c) Minimal: Link leads to a page that does not clearly show a direct link to the SD/CMR – EX: a page with a large number of links or documents; EX: all SEC filings or to general homepage. (2 points)	d) No link or broken link. (0 points)		



note	rather than a stand-alone document or page. (5 points)					
12.	The quantity of verified <b>conflict-free smelters</b> the filer has in its supply chain is referenced. (Select only one answer.)					5
possible answers	a) Yes (5 points)	b) No (0 points)				
note	We also included refiners in the scope of this indicator, although not explicitly stated.					
13.	Rate the level of detail and completeness with which <b>SOR sources</b> were identified. (Select all that apply.)					4
possible answers	a) Included the name of each SOR. (1 point)	b) Included each SOR's country location - The actual location of the SOR must be stated, rather than where the minerals originated. (1 point)	c) Included minerals processed by each SOR. (1 point)	d) Listed quantitative information such as total number of SORs in all product categories. (1 point)		
note	We added option "e) not specified"					
14.	Filer describes plans for continuous improvement of conflict minerals supply chain risk management and due diligence. Steps for improvement must be clearly headlined as such, i.e., not peppered in elsewhere. (Select only one answer.)					5
possible answers	a) Exemplary: Goals, metrics and steps are exemplary and filer commits to publicly report on progress. (5 points)	b) Thorough: Sets clear goals with both metrics and steps (strategy). (4 points)	c) Adequate: Sets general goals with either metrics or steps. (3 points)	d) Minimal: Sets general goals without metrics or steps, or acknowledges a need, possibility or desire for improvement. (1 point)	e) No reference made. (0 points)	
note						
15.	The filer requires (or explicitly expects) suppliers to source only from verified conflict-free SORs. (Select only one answer.)					5
possible answers	a) Yes (5 points)	b) Partially (2 points)	c) No (0 points)			
note						
16.	Filer took leadership in engaging SORs or in-region mining efforts. (Select all that apply.)					8

possible answers	a) In-kind support to an in-region multi-stakeholder or industry working group or audit committee (ICGLR, OECD Working Group, ITRI/iTSCi, Solutions for Hope, CFTI). (2 points)	b) Filer sent an employee or direct representative to mines, SORs, or SOR associations to encourage participation in conflict-free verification. (2 points)	c) Financial support of an in-region conflict-free mining effort (PPA, Solutions for Hope, ITRI/iTSCi, CFTI etc.). (2 points)	d) Financial support of a midstream audit (CFSI Early Adopter Fund or equivalent). (2 points)	e) None. (0 points)	
note						
17.	Filer committed to supporting a conflict-free minerals trade within the DRC and covered countries or Great Lakes Region (GLR) and described participation. (Select all that apply.)					6
possible answers	a) Yes, describes participation in in-region efforts: International Conference of the Great Lakes Region (ICGLR), Solutions for Hope, Conflict-Free Tin Initiative (CFTI), ITRI Tin Supply Chain Initiative (iTSCi) or other. (2 points)	b) Yes, describes participation or membership activities in a multi-stakeholder effort: Multi-Stakeholder Group (MSG) convened by RSN, Public Private Alliance for Responsible Minerals Trade (PPA), or OECD working group. (2 points)	c) Yes, states a general commitment to source conflict-free from the DRC and/or covered countries. (2 points)	d) No commitment made. (0 points)		
note						
18	Filer does not have a policy to avoid sourcing from the DRC and covered countries. Each filer is encouraged to contribute to a conflict-free minerals trade in the DRC and to not avoid the DRC altogether, which could contribute to a phenomenon known as the “embargo effect.” In any geographic region where greater rule of law is needed, a filer can do much greater good by sourcing responsibly than by divesting from the region. Moving away from a region like the DRC because of heightened scrutiny fails to demonstrate commitment to improving human rights within a filer’s supply chain. (Select only one answer.)					5
possible answers	a) Company’s filing does not mention engaging in the unacceptable practice of	b) The filer’s filing does mention engaging in this unacceptable practice of				

	avoiding sourcing from the region. (5 points)	avoiding sourcing from the region. (0 points)				
note						
						100



## Appendix E: Scores

As per the study funder’s request, this study report version (Version 1 – July 27, 2015) will contain the truncated version of the scores, featuring 25 issuers. As agreed with the funder, the study report Version 2 – to be released in 3 months’ time upon the publication of this report – will feature the full listing of companies and their scores. This truncated version of the table first sorts companies by their compliance-based score, then by their market capitalization.

Company name	CIK	RY 2013 Filer?	Filing type	Compliance -based score	“Good practice” score	Difference between scores
APPLE INC	320193	Yes	SD + CMR	100	73	27
MICROSOFT CORP	789019	Yes	SD + CMR	100	84	16
GENERAL ELECTRIC CO	40545	Yes	SD + CMR	100	72	28
VERIZON COMMUNICATIONS INC	732712	No	SD + CMR	100	72	28
INTERNATIONAL BUSINESS MACHINES CORP	51143	Yes	SD + CMR	100	76	24
INTEL CORP	50863	Yes	SD + CMR	100	82	18
CISCO SYSTEMS INC	858877	Yes	SD + CMR	100	69	31
HOME DEPOT INC	354950	Yes	SD + CMR	100	70	30
TAIWAN SEMICONDUCTOR MANUFACTURING CO LTD	1046179	Yes	SD + CMR	100	76	24
RIO TINTO PLC	863064	Yes	SD + CMR	100	60	40
ABB LTD	1091587	Yes	SD + CMR	100	57	43
HALLIBURTON CO	45012	Yes	SD + CMR	100	63	37
CANON INC	16988	Yes	SD + CMR	100	79	21
ILLINOIS TOOL WORKS INC	49826	Yes	SD + CMR	100	71	29
ECOLAB INC	31462	Yes	SD + CMR	100	55	45
EATON CORP PLC	1551182	Yes	SD + CMR	100	69	31
TESLA MOTORS INC	1318605	Yes	SD + CMR	100	69	31
MICRON TECHNOLOGY INC	723125	Yes	SD + CMR	100	67	33
SHERWIN WILLIAMS CO	89800	Yes	SD + CMR	100	59	41
DELPHI AUTOMOTIVE PLC	1521332	Yes	SD + CMR	100	59	41
MAGNA INTERNATIONAL INC	749098	Yes	SD + CMR	100	69	31
MACY S INC	794367	Yes	SD + CMR	100	69	31
WESTERN DIGITAL CORP	106040	Yes	SD + CMR	100	72	28
SKYWORKS SOLUTIONS INC	4127	Yes	SD + CMR	100	70	30
INTUITIVE SURGICAL INC	1035267	Yes	SD + CMR	100	63	37



## Notes

*Company names in bold were not assessed as the Form SDs of those companies simply referred to filings of their subsidiary/ies.*

### Unifi:

One filing (6/1/2015) is for reporting year 2013 and the other (on 2/5/2015) is for reporting year 2014

### TearLab:

One filing (05/12/2015) is for reporting year 2013 and the other (on 05/29/2015) is for reporting year 2014



### Calix:

Only one of the two exhibits (both labeled as EX-1.01) is the CMR.

### Covidien / Medtronic:

Within reporting year 2014, Covidien Public Limited Company (now known as Covidien Limited) and Medtronic, Inc. became wholly owned subsidiaries of Medtronic Public Limited Company. Although they only filed one Form SD, they have two distinct CMRs. So we treat them therefore as two distinct filings.

### **Icahn Enterprises** / Federal-Mogul / American Railcar Industries:

Icahn Enterprises (CIK 813762) is the holding company of both Federal-Mogul and American Railcar Industries. We thus did not assess Icahn Enterprises but only assessed Federal-Mogul and American Railcar Industries.

### OWENS ILLINOIS:

Owens-Illinois Group, Inc. (CIK – 812233) is a subsidiary of Owens Illinois Inc DE (CIK – 812074), but as each submitted its own separate filing we treated them separately.

### **Scotts Miracle-Gro** / AeroGrow International:

AeroGrow International, Inc (CIK – 1316644) is a consolidated subsidiary of Scotts Miracle-Gro Company (CIK 825542). AeroGrow submitted both a Form SD and a CMR, which we evaluated.

### **NL Industries** / **Valhi Inc DE** / CompX International:

CompX International Inc (CIK – 1049606) is apparently a subsidiary of both NL Industries (CIK – 72162) and Valhi, Inc. DE (CIK – 59255). CompX filed a substantive Form SD which we evaluated.

### **Fidelity National Financial Inc** / Remy:

Fidelity (CIK 1331875) sold Remy toward the end of 2014. Remy filed a substantive Form SD which we evaluated.