

# Conflict Minerals Rule Compliance Resources

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**This Note identifies and discusses resources that may assist companies in their conflict minerals rule compliance programs. It is a companion resource to Practice Note, Conflict Minerals Diligence, (0-510-6930) which explains the diligence and disclosure required by Rule 13p-1 under the Exchange Act, the SEC rule implementing Section 1502 of the Dodd-Frank Act.**

Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires a significant number of SEC reporting companies to make specialized disclosure and conduct related diligence concerning specified minerals and their derivative metals contained in the companies' products. The minerals and metals covered by the rule, which are included in many common products, include:

- Cassiterite.
- Columbite-tantalite (coltan).
- Wolframite.
- Tin, tantalum and tungsten, which are derivatives of these minerals. These metals are often referred to as the "three Ts."
- Gold.
- Other minerals or derivatives the US Secretary of State may designate in the future.

The sale of these minerals, which Section 1502 defines collectively as conflict minerals (regardless of their origin), is believed to be financing conflict in the Democratic Republic of the Congo (DRC). The intent of Section 1502 is to reduce a significant source of funding for armed groups that are committing human rights abuses and contributing to conflict in the DRC.

The SEC's rule implementing Section 1502, Rule 13p-1 under the Securities Exchange Act of 1934 (the conflict minerals rule), was adopted on August 22, 2012 (see SEC Release No. 34-67716 (adopting release)). Under the conflict minerals rule, companies

that manufacture or contract to manufacture products that contain conflict minerals generally must conduct diligence on the source of the applicable conflict minerals. In some cases, the company will be required to publicly disclose that its products containing the minerals have not been found to be "DRC conflict free." When possible, companies are expected to preemptively make changes to their supply chains in response to the rule to avoid having to disclose that their products have not been found to be DRC conflict free.

This Note discusses some of the leading resources for companies that must conduct conflict minerals diligence, as well as other initiatives that may help a company comply with the conflict minerals rule. Some of these resources and initiatives are still in the development stage, and their maturity may also vary between the individual conflict minerals.

This Note should be read together with Practice Note, Conflict Minerals Diligence, (0-510-6930) which includes a detailed explanation of the conflict minerals rule and the three-step diligence process companies may be required to conduct under the rule.

## OECD GUIDANCE AND RELATED RESOURCES

The Organisation for Economic Co-operation and Development (OECD) has published a preliminary version of the second edition of its OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas. The guidance provides a framework for conflict minerals due diligence, with a supplement on the three Ts and a supplement on gold. The conflict minerals rule adopting release states that the OECD guidance is currently the only nationally or internationally recognized due diligence framework for conflict minerals due diligence. Therefore, the guidance is the only framework that can be used to conduct the detailed supply chain due diligence that some companies must conduct under the conflict minerals rule (see Practice Note, Conflict Minerals Diligence: Diligence Step 3: Detailed Due Diligence and Reporting on Supply Chain (0-510-6930)).

The OECD guidance contains a five-step diligence framework, which includes the following steps:

- Establish strong company management systems.
- Identify and assess risks in the supply chain.

- Design and implement a strategy to respond to identified risks.
- Carry out an independent third-party audit of supply chain due diligence at identified points in the supply chain.
- Report on the supply chain due diligence.

Some aspects of the framework are intended to be implemented at the company level, while others may be addressed at an industry or multi-stakeholder level. The OECD has published a simplified version of the guidance, which is available in English, French, Mandarin, Swahili and Lingala on the OECD's website. Companies may find this simplified version of the guidance more appropriate for employee and supplier training programs. The OECD has also published a leaflet explaining its view of how the guidance can help companies comply with the conflict minerals rule.

Notably, the OECD guidance also includes a model supply chain policy. A company may want to refer to the model policy as it drafts its own free-standing conflict minerals policy or incorporates conflict minerals issues into its existing social responsibility or similar policy.

### OECD SUPPLEMENTS

The OECD guidance includes a supplement on the three Ts, and a supplement on gold. These supplements contain specific diligence recommendations tailored to the challenges associated with the structure of the supply chains of these minerals. The supplements include specific guidance for both upstream companies (companies in the mineral supply chain from mines to smelter or refiner) and downstream companies (companies from smelters or refiners to reporting companies). The gold supplement contains a specific framework for conducting due diligence on gold thought to be from recycled sources. Notably, the three Ts supplement does not include a framework for due diligence on these minerals thought to be from recycled sources. For a discussion of issues raised by this, see Practice Note, Conflict Minerals Diligence: Purpose and Design of the Diligence ([0-510-6930](#)).

The supplements recommend that **upstream** companies develop a chain-of-custody (or traceability) system for the minerals they mine or trade. By collecting this information and providing it to smelters and refiners, upstream companies enable audits of smelters and refiners which seek to determine whether a particular smelter or refiner sources minerals only from conflict free sources (for a discussion of upstream traceability initiatives currently underway, see Upstream Traceability Initiative).

The supplements recommend that, among other things, **downstream** companies review the diligence smelters and refiners conduct in their sourcing operations to determine if the smelters and refiners are sourcing responsibly. Downstream companies can do this on an individual basis, or as a part of industry-wide smelter or refiner assessment schemes (for a discussion of a smelter assessment scheme, see Conflict Free Smelter Program). Most companies are expected to take the latter approach.

This upstream/downstream strategy recognizes that, because smelters and refiners aggregate minerals from many sources, it is typically not feasible for a downstream company to trace the chain of custody of its minerals further upstream than the smelter or refiner. This makes the smelter/refiner level a critical point in the supply chain for due diligence purposes.

### PILOT IMPLEMENTATION PROGRAM

The OECD's pilot implementation was a voluntary information-sharing program for companies that initially implemented the OECD guidance for the three Ts between August 2011 and November 2012. Participants in the program reported the steps they took to implement the guidance, and their results and challenges, to the OECD. The OECD in turn shared their experiences on an aggregated basis, and the OECD's own analysis of those experiences, with the public.

Several prominent reporting companies participated in the portion of the program focusing on downstream companies. While no small and medium-sized enterprises participated in the first two phases of the program, during the third phase, input provided by industry associations did include some data relating to these enterprises.

The OECD has released a series of reports on the pilot implementation program. Reporting companies and other companies affected by the conflict minerals rule may find these reports, and in particular the final report, useful as they develop their compliance programs and benchmark their conflict minerals diligence efforts against those of other companies. These reports include:

- First phase, baseline reports reviewing current practices and challenges from each of the upstream supply chain and the downstream supply chain (released in November 2011).
- Second phase, interim reports, reviewing the implementation progress of upstream and downstream participants since the beginning of the pilot program (released in June 2012). These reports provide deeper insights into current practices and experiences in implementing the OECD guidance.
- Third phase, final reports, again for upstream and downstream participants (released in January 2013). These reports are focused on understanding the evolution of due diligence over the pilot program.

### Types of Companies Represented

Participants in the downstream pilot implementation include companies at several points in that part of the supply chain, including:

- Component manufacturers.
- Product manufacturers.
- Original equipment manufacturers (companies that buy components and include them in their own products).

These downstream program participants come from several different industry sectors, including:

- Aerospace and defense.
- Automotive.
- Medical devices.
- Information and communications technology.
- Consumer products.
- Extractives.
- Chemicals.
- Lighting.

Industries not represented include:

- Jewelry.
- Construction.
- Pharmaceuticals.
- Packaging.

Participants in the upstream pilot implementation include companies at several points in that part of the supply chain, including companies engaged in:

- Mining.
- Trading (including mineral exporters, or *comptoirs*).
- International concentrate trading and mineral re-processing.
- Metal refining or smelting.

### Highlights of the Reports

The downstream reports contain a detailed discussion of how the participants sought to make the OECD guidance work in the context of their businesses. Among other things, the reports cover:

- How participants incorporated conflict minerals-related requirements into corporate policies and supplier contracts, and strategies companies used to communicate and explain the conflict minerals rule to suppliers.
- The extent to which participants took part in industry-wide efforts, such as the EICC-GeSI initiatives, as part of their diligence process (see EICC-GeSI Resources).
- Strategies participants used to address suppliers' confidentiality concerns.
- Methods companies used to assess smelter diligence.
- The amount of employee time participants devoted to conflict minerals compliance, and how companies structured their conflict minerals compliance function.
- In the third report, trends over the course of the program in the development of companies' implementation. Trends identified include companies' increased engagement with suppliers to communicate diligence requirements and expectations and the increased reliance by companies on industry initiatives, including:
  - the conflict free smelter program (see Conflict Free Smelter Program);
  - third-party developed tools and processes, including common questionnaires and data collection tools that enable consistency through the supply chain (see Reporting Template and MRPro Dashboard); and
  - industry-wide efforts to provide trainings and access to tools, webinars and in-person meetings on responsible sourcing practices and data collection.

The initial upstream report detailed significant challenges faced by upstream companies in implementing the guidance. The report includes several examples, however, of upstream companies using the International Tin Supply Chain Initiative (iTSCI) traceability program as part of their efforts to document or identify the mine of origin of the minerals they mine, trade or process (see ITRI Supply Chain Initiative).

The final upstream report noted the growing commitment of upstream actors to proceed with the implementation of the OECD

guidance. Among other factors, the report attributes this change in attitude to demand, as well as funding, from downstream customers. The report noted increased opportunities over the course of the program for upstream actors responsibly sourcing minerals to market them through the iTSCI program.

### EICC-GeSI RESOURCES

The Electronic Industry Citizenship Coalition (EICC), a coalition of electronics companies, and the Global e-Sustainability Initiative (GeSI), a sustainability-oriented organization focused on the information and communication technology industries, have undertaken initiatives and produced resources that are widely used by many companies as part of their conflict minerals compliance programs.

### REPORTING TEMPLATE AND MRPRO DASHBOARD

The EICC-GeSI has released a conflict minerals reporting template and dashboard tool, both of which are available for free download. Companies can use the template as a standard questionnaire for their suppliers, or as a starting point for a customized questionnaire. Many companies are doing this. The dashboard tool, which is referred to as MRPro, allows a company to manage the templates that it receives from its direct suppliers by automatically aggregating completed supplier templates. It also allows companies to generate an outbound template that can be sent to companies further downstream. The EICC-GeSI website also includes instructions on how to use the MRPro, as well as sample form letters to suppliers.

### CONFLICT FREE SMELTER PROGRAM

As part of their conflict minerals diligence process, many downstream companies will need to collect information (either directly or indirectly through intermediate suppliers) from the smelter or refiner that originally processed the minerals contained in the company's products. According to the conflict minerals rule adopting release, to rely on a mineral processor's representation about the source of its minerals, a company must have a reason to believe a processor's representation is true given all facts and circumstances, including any red flags that raise doubt. The release notes that a company would have reason to believe a representation is true if the processor was identified as processing only DRC conflict free minerals by a recognized industry group that requires an independent audit of processors (or the processor had independently obtained an audit of its sourcing operations).

The EICC-GeSI has developed a program to certify minerals processors as conflict free after an audit process. This program allows smelters to apply to be audited on a voluntary basis. Smelters that apply are audited by an independent third party, with the goal of establishing that they purchase only conflict free minerals.

The EICC-GeSI publishes lists of compliant smelters. The program is currently being phased in on a mineral-by-mineral basis. Currently, smelters (or refiners, in the context of gold) working with each conflict mineral are involved in the certification process, and a number of tantalum and tin smelters, as well as gold refiners, have been certified conflict-free.

For more information on the program, see the EICC-GeSI's frequently asked questions.

## OTHER RESOURCES

The EICC-GeSI has also published a list of consultants that can assist smelters and refiners with the implementation of OECD guidance-compliant sourcing schemes in the DRC and adjoining countries (covered countries).

## INDUSTRY GROUP RESOURCES

Several industry groups have been active in developing compliance strategies and assisting member companies generally with their conflict minerals rule compliance. This section gives an overview of some of these industry initiatives. The US Department of State has indicated that it supports the use of industry-wide initiatives to overcome practical challenges and to effectively discharge the due diligence recommendations contained in the OECD's guidance.

### AUTOMOTIVE INDUSTRY ACTION GROUP

The Automotive Industry Action Group (AIAG) has been active in developing informational resources and compliance tools for its member companies.

The AIAG has published conflict minerals FAQs, most recently updated on November 12, 2012. It has also made available a conflict minerals reporting checklist listing some of the steps companies may want to take as part of their compliance programs.

The AIAG is also working to put in place a common supply chain data collection system for conflict minerals origin determinations and smelter identifications. To that end, AIAG has co-developed the iPoint Conflict Minerals Platform (iPCMP) software tool with iPoint, a software solution provider. The iPCMP tool, which is available for license, can be used to deliver conflict minerals questionnaires to suppliers and to manage supplier responses. iPCMP questionnaires are modeled on the EICC-GeSI reporting template. For more information on the iPCMP, see these FAQs.

### ASSOCIATION CONNECTING ELECTRONICS INDUSTRIES

During February 2013, the Association Connecting Electronics Industries (ICE) published a 16-page conflict minerals due diligence guide that is available for purchase.

ICE maintains a conflict minerals resource page for electronics companies. Among other resources, the page includes a sample letter to suppliers informing them of the conflict minerals rules and its requirements.

ICE is also developing a data exchange standard for conflict minerals that will be part of the ICE-175x family of data exchange standards based on an XML schema standard. A final standard is expected in June 2013. The ICE's conflict minerals resource page has additional information about these initiatives.

### LBMA RESPONSIBLE GOLD GUIDANCE

The London Bullion Market Association (LBMA) introduced the most recent version of its Responsible Gold Guidance in December 2011. The guidance is based on the OECD guidance and is tailored for gold bullion banks and refiners. All refiners must comply with the guidance by specified deadlines to remain on the LBMA's good delivery list (this is key for refiners who produce gold bars intended for the international commodities market).

In addition to other steps, banks and refiners must obtain an audit of their compliance with the guidance. Members must submit audit reports at the end of 2013. For 2012, compliance with the audit requirement was voluntary.

The LBMA has also published a helpful executive summary of the Responsible Gold Programme.

The LBMA, RJC and EICC-GeSI Conflict Free Smelter Program use third party audits of gold refiners to help companies source conflict free metals. These organizations are now cross-recognizing each other's audit programs, which will be more efficient for gold refiners.

### NATIONAL RETAIL FEDERATION

The National Retail Federation (NRF) prepared compliance resources that are available to its members. Resources include the NRF's guide to conflict minerals law implementation and compliance and a retail industry conflict minerals policy statement. The NRF has also created templates for a compliance policy statement, a vendor compliance letter and a vendor reporting survey.

### RETAIL INDUSTRY LEADERS ASSOCIATION

The Retail Industry Leaders Association (RILA) has prepared an expanded version of the EICC-GeSI supplier questionnaire that includes product level declarations. RILA also has developed retail-focused training for the EICC-GeSI template. These materials are available to RILA members.

### RJC SYSTEM

The Responsible Jewellery Council (RJC) has developed the RJC System, which is a certification system for the diamond and gold jewelry supply chain. Each RJC member organization must be audited by an accredited third party to verify its compliance with the RJC's ethical, human rights, social and environmental standards. The RJC system was developed before Section 1502 was enacted.

In March 2012, the RJC introduced its Chain-of-Custody Standard (CoC Standard). The CoC standard sets requirements for companies with the goal of verifying the source of gold and platinum. RJC members that follow the standard can apply to be certified as compliant by the RJC after an audit. To be certified as responsibly sourced, a company's gold and platinum must, at a minimum, come from conflict-free sources. Companies can also use the CoC standard to ensure that their gold and platinum originated from sources that adhere to certain human rights and fair labor practices standards.

All RJC members can voluntarily seek certification under the CoC Standard. The RJC has also made the standard publicly available on its website as an informational resource for non-members. As of March 4, 2013, the RJC had certified four companies under the CoC Standard.

### WORLD GOLD COUNCIL

The World Gold Council (WGC) has adopted a Conflict-Free Gold Standard. The standard has been designed with the OECD guidance in mind to allow companies in the gold supply chain to demonstrate that their gold has been extracted in a manner that does not benefit armed conflict or human rights abuses. The WGC has also published a guidance document on the standard, which includes a set of tools designed to help companies comply with the standard.

Information about the standard and the guidance are available on the WGC's website.

### UPSTREAM TRACEABILITY INITIATIVE

Motivated in part by Section 1502, ITRI, an organization of major tin producers and smelters, is building an infrastructure for tracing the upstream supply chain of tin, tantalum and tungsten in the covered countries. Companies should be aware that this initiative does not cover gold and that it remains in the implementation phase in certain respects.

### ITRI'S SUPPLY CHAIN INITIATIVE

ITRI has introduced a project intended to eventually enable the traceability of the three Ts and their chain of custody along the upstream supply chain in the covered countries. The project is known as ITRI's tin supply chain initiative, or iTSCi. While originally limited to tin, with the cooperation of the Tantalum-Niobium International Study Center (TIC), the project has expanded to also cover tantalum and tungsten. The goals of the project include to:

- Capture information that can help companies implement the OECD guidance.
- Capture information that will allow US reporting companies to make conflict minerals rule disclosure.
- Help smelters seeking conflict free certification under the EICC-GeSI program establish the source of the minerals they process.

The iTSCi system works at each level of the upstream supply chain, including by:

- At the mine level, initially determining that a mine is conflict-free, and then weighing and "bagging and tagging" minerals from that mine to indicate their mine of origin. The program also involves monitoring of working conditions and other aspects of the mines where iTSCi bagging and tagging are ongoing.
- At the mineral processor (*negociant*) and international exporter (*comptoir*) level, another level of bagging and tagging of minerals to record their path through this portion of the supply chain.
- Finally, at the smelter level, delivering this origin and chain of custody information, which permits the smelter to establish whether the minerals it processes come only from conflict free sources.

This initiative is still in its earlier stages and has suffered many delays. Pilot programs that began in the eastern DRC in late 2010 have been stopped because of increased instability in the region. However, programs are ongoing in Rwanda and the southern DRC (including the province of Katanga and, more recently, Maniema), with the goal of eventually having programs in all covered countries. The implementation of these plans will depend on adequate funding, cooperation and stability.

For more information on iTSCi, see ITRI's website.

### STATE DEPARTMENT RESOURCES

Section 1502 requires the State Department to create a conflict minerals map that shows trade routes, mineral rich zones and areas under control of armed groups to aid companies in complying with Section 1502. The map, which was most recently updated on May 23, 2012, provides details on deposits of conflict minerals in the eastern DRC and also provides known locations of armed groups in the same area. Companies should realize, however, that the map has limitations, since not all of the information is up to date and control of some of the areas covered is constantly changing. The map was prepared by a non-governmental organization, the International Peace Information Service (IPIS), based on studies completed in 2009, 2010 and additional 2010 and 2011 data from the United Nations Organization Stabilization Mission in the DRC.

The adopting release states that the SEC does not believe that an up-to-date State Department map is necessary for complying with the conflict minerals rule, in particular because the OECD guidance does not make reference to the State Department map.

The State Department and United States Agency for International Development launched a technical aid initiative, the Public-Private Alliance for Responsible Minerals Trade, in October 2011. The alliance aims to promote the development of fully traced and validated supply chain routes for conflict minerals through coordination between the private sector and the US government.

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