

Conflict Minerals: What's Ahead for Your Company?
Answers in Plain Sight – Part One: Component Companies
By Douglas Hileman, CRMA, CPEA

The Securities and Exchange Commission (SEC) rule for Section 1502 of the Dodd-Frank Wall Street Consumer Reform & Protection Act (“Dodd-Frank Conflict Minerals” or DFCM) took effect for calendar year 2013. The SEC rule provided for two transition years, recognizing that it would take issuers some time to gather information on the origin of tin, tantalum, tungsten and gold (3TG) in their supply chain. Companies subject to DFCM submitted their filings for Year One on or before June 2, 2014.

Several firms have done research on the SEC filings, or sub-groups of them. They have evaluated what is possible from a broad, generic research effort: percentage of signatories by title; number of companies using the term “DRC Conflict Undeterminable,” etc. At least one firm¹ went a step further and offered some insights on the data.

Companies are beginning to focus attention on their DFCM programs for Year Two. Many DFCM practitioners know it will differ from Year One. Some DFCM practitioners are improving their business processes. Many are adapting data management systems to enable data collection using the latest version of the Conflict Minerals Reporting Template² (CMRT). Companies understand they must comply with the rule. Companies also wish to conform to industry practice – “in the pack” - but without expending unnecessary resources to do so. DFCM practitioners may not yet realize that the pack is moving. Where? How fast? In particular, where will they be at the end of Year Two?

Some of the answers are in plain view. Douglas Hileman Consulting LLC (DHC) recently conducted industry research of companies with similar parameters to find out. DHC customized research to consider where a company is in the overall supply chain, and included companies that make parts or components, their customers (who typically make products for sale), and companies up the supply chain from the first group (“suppliers”). The research included review and assessment of SEC filings – including forward-looking statements included in the SEC filings, and other public disclosures.

This white paper – part one of four – looks at disclosures from Component companies and their peers (“Peers”).

¹ See “A Review of First Wave of Conflict Minerals Filings,” released July 30, 2014 by Davis Polk, at www.davispolk.com

² See www.conflictreesourcing.org for information on the CMRT.



SEC Filings: Content from Component Companies and Their Peers

All the U.S.-based Component companies and their peers (“peers”) filed a Form SD and a Conflict Minerals Report (CMR). Peer company disclosures differed on matters including:

- **Products and Scoping:** Some Component companies described their products in more detail, including the number of products (some in the thousands), and how they identified which products were in scope for DFCM.
- **Smelters:** Some Component companies included lists of smelters in their supply chain, or *reported* to be in their supply chain, or provided to them by their suppliers. Some peer companies did not include lists of smelters. Some peers listed only the smelters that had indicated they source from Covered Countries³. A peer company provided the number of smelters that indicated they source from Covered Countries – but not the list of smelters.
- **Industry Involvements:** Almost all Component companies mentioned industry associations – usually the Electronic Industry Citizenship Coalition⁴ and/or the Conflict Free Sourcing Initiative. The way they referenced these groups varied, including membership, support, reliance, or use. Peer companies who indicated they “support” industry associations did not always indicate if the support was financial. It would be expected that almost every company would use something related to an industry association; the CMRT was the industry standard for compiling information on 3TG in the supply chain.
- **Metrics:** Component companies tended to include few performance metrics in their SEC submittals. When they did, they usually focused on interactions with their suppliers (response rate to requests, number of responses received) or the 3TG smelters in the supply chain (number or percentage of applicable smelters found to be conflict free).

Forward-Looking Statements

The vast majority of Component companies in the research effort did provide forward-looking statements in their CMRs. Common themes included:

- Continued outreach to suppliers
- Support of industry efforts for conflict-free smelters
- Greater response from suppliers
- Getting better information from suppliers

³ Covered Countries include the Democratic Republic of Congo (DRC) and all adjoining countries.

⁴ See www.eicc.info



There were some forward-looking statements made by only one peer company included in the research:

- Request suppliers to participate in CFSI
- Emphasize expectation of a full and prompt response to requests [to suppliers]
- Instruct suppliers to inform us if any smelter appears in the supply chain that does (or appears to) fund armed groups in the Covered Countries.

Other Disclosure Mechanisms

Many Component companies used mechanisms other than SEC filings to make disclosures on conflict minerals. One company released a “Conflict Minerals White Paper” the same day as their SEC filings. The white paper is very similar to the Conflict Minerals Report, but with several performance metrics included that were not in the SEC filings.

Most other Component companies had some information on conflict minerals on their websites. In almost all cases, the information consisted only of their conflict minerals policy.

In general, non-U.S. companies had more information on their websites than U.S.-based publicly-traded companies. The information on non-U.S. company websites was more varied, and in some cases different, from the content of U.S. companies’ CMRs. One non-U.S. peer company hinted at intentions to remove all 3TG originating in the DRC from its supply chain. Another non-U.S. peer company expressed conflict minerals program goals that were similar in theme to U.S.-based companies, but used terms not common among the U.S. filers, such as “mineral resources obtained illegitimately” and “unjustly sourced” conflict minerals.

Sustainability reports (or content in this area of a company website) would be another logical vehicle for disclosures on conflict minerals. The only peer companies that had substantive description of conflict minerals programs in Sustainability reports were those that launched their programs in 2012 or before.

No Component company made a commitment to be DRC Conflict Free by a specified date.

DHC Analysis and Suggestions

DHC noted that there did not seem to be “a pack” with regard to Component companies’ approach to listing or describing smelters in CMRs. Companies appear to rely on the work product of the CFSI, but have not uniformly joined the group (or similar industry initiatives) – or simply elected not to report it.

DHC further notes that the SEC rule does not require issuers to include forward-looking statements in their SEC filings (Form SD or CMR). Even so, most Component companies elected to do so. The effort



required in the implementation of robust systems, controls, and to gain supportable knowledge of 3TG in supply chains is substantial. Companies may have felt that the extent of progress they were able to describe in their CMRs for Year One could underwhelm some stakeholders. Forward-looking statements provide a mechanism to acknowledge that their conflict minerals program at the end of Year One is not fully built-out.

If a company wishes to be reasonably in line with peer companies, DHC notes that forward-looking statements provide clues of where the peer companies are going. DHC further notes that the SEC rule does not require companies to fulfill forward-looking statements, or to report on their progress for forward looking statements. Nonetheless, it would be unsurprising for non-governmental organizations, analysts, or other stakeholders to do so after companies submit their SEC filings for the 2014 reporting year.

DHC notes that there are different requirements and expectations for SEC submittals (as well as different authority and drivers for enforcement) as for other public disclosures. A white paper offers the opportunity for greater transparency to stakeholders, while reducing risk of enforcement or expectations from the SEC. The peer company that published a white paper took an innovative approach to provide transparency, yet reduce exposure to potential enforcement.

DHC notes that the timeline for publishing Sustainability reports typically does not align with the timeline for the SEC submittal for conflict minerals. If a company publishes a Sustainability report in March or April, this is before they have compiled information for their SEC filing. If a company publishes a Sustainability report in June or July, there is little left to say that was not in the SEC filing.

DHC believes it was reasonable to refrain from specifying a date as a goal for all products to be DRC Conflict Free, given the evolving state of supply chain systems and controls for 3TG.

The conclusions from comparing SEC filings and disclosures among the Component manufacturers and their peers confirms that “the pack is moving,” and in some cases where. The research confirmed some expectations, and highlighted some different approaches and efforts by peer companies. DHC suggests that companies subject to DFCM:

- conduct similar research of their peer companies,
- take note of gaps compared to their own conflict minerals program, including stated program improvements for Year Two,
- evaluate gaps for relevance and impact to your company, and
- adjust Year Two conflict minerals program accordingly.



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About Douglas Hileman

Douglas Hileman, CRMA, CPEA has over 35 years of experience in compliance, governance, risk management, auditing, and external reporting. His experience includes nine years in industry, six years at a Big 4 accounting firm, 15 years in environmental and management consulting, and over six years as president of his own firm. While at PricewaterhouseCoopers, he supported dozens of procedures for financial audits, as well as numerous engagements through internal audit and risk management. He led an audit for a company to comply with terms of a consent agreement with the SEC – the first (and, to date, the only) one of its kind. He submitted comments on the draft SEC rule for conflict minerals. He has published and presented numerous thought leadership pieces on DFCM, focusing on company practices to achieve timely, effective, and efficient compliance with the rule and the numerous other requirements related to the issue. He has supported clients in developing and improving conflict minerals programs, and benchmarking conflict minerals programs among industry participants. DHC conducted one of the four Independent Private Sector Audits (IPSAs) known to be filed with the SEC for Year One. He is a member of the Institute of Internal Auditors (IIA), including as a board member of the Los Angeles chapter, and a member of a global committee. He is a Certified Risk Management Assurance professional, a Certified Professional Environmental Auditor, and a Professional Engineer.

See www.douglashileman.com for more on Mr. Hileman and his firm’s services. See sister sites www.DFCMAudit.com and www.DFCMTraining.com for more information on conflict minerals.