

## **Conflict Minerals: What's Ahead for Your Company?**

### **Answers in Plain Sight – Part Three: Suppliers**

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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.

Companies are beginning to focus attention on their DFCM programs for Year Two. Many DFCM practitioners know it will differ from Year One. Since conflict minerals involves sourcing issues in companies’ supply chains, companies are looking to suppliers for more and better information. Will suppliers be able to provide it? What are they doing? When will they be ready? In particular, what will they be able to provide 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 three of four – looks at disclosures from a group of companies that are suppliers to the component companies and their peers (“Suppliers”).

#### **SEC Filings of Suppliers**

Only about half of the companies selected in the Supplier group for consideration made filings for DFCM. The other companies were not public issuers subject to SEC rules. Of these, one-third submitted a Form SD only. The Forms SD provided little information on conflict minerals programs.

Contents of the Conflict Minerals Reports (CMRs) for those Suppliers that submitted them included the information discussed below.



- **Source of 3TG:** Not all of the Suppliers that submitted a Form SD only explicitly stated that they were doing so because they determined there were no 3TG from Covered Countries<sup>1</sup> in their supply chains. One Supplier that did mention sourcing indicated they had no knowledge of 3TG from Covered Countries, but did not provide support for their conclusion.
- **Describing Determinations:** All of the CMRs described determinations of being conflict-free, but without using the term “DRC Conflict Undeterminable.” Many of the Suppliers referred to their products in these determinations, rather than describing conflict-free attributes of their entire supply chain, or their company in general.
- **Industry Involvements:** Almost all of the Suppliers indicated they used the EICC/ GeSI’s Conflict Minerals Reporting Template (CMRT) to provide information. None of the Suppliers indicated they were members of the Conflict Free Sourcing Initiative or other industry groups that work to support conflict-free supply chains.
- **Level of Detail:** In general, Supplier companies’ CMRs included less discussion of the design of due diligence practices, the steps they took, or their actions towards obtaining complete, reliable information in their own supply chains than CMRs published by Component companies and peers, or the Components’ Customer companies.

One Supplier company described their risk-based approach to their due diligence, including their estimate of total number of suppliers, and the number of their suppliers included in their due diligence. Another Supplier company stated they had requested representation letters from their own suppliers, implying this was the basis for their own conclusions.

#### **Forward-Looking Statements: Supplier Companies**

The Supplier companies selected for review included very few forward-looking statements in their CMRs. The focus areas included:

- Getting more information from their suppliers
- Encouraging participation in the Conflict Free Smelter program

#### **Other Disclosure Mechanisms: Supplier Companies**

Supplier companies had widely differing approaches to addressing conflict minerals on their websites. Some Suppliers had posted their conflict minerals policies only. One Supplier had a general statement and goal of avoiding funding conflict. Another Supplier described conflict minerals programs, and

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<sup>1</sup> Covered Countries include the Democratic Republic of Congo (DRC) and all adjoining countries.



described different aspects of the program than were in their SEC filings. One Supplier described conflict minerals program goals and elements that contradicted some of the statements in their SEC filings.

One Supplier's website included a copy of a letter to their suppliers, dating from before publication of the final SEC rule. In it, the Supplier required a guarantee letter from their suppliers, and an attestation that they are not sourcing from areas in Covered Countries controlled by unlawful groups.

None of the Supplier companies provided target dates for being conflict-free.

### **DHC Analysis and Suggestions**

Supplier companies' SEC submittals were included fewer details than those made by Component companies and peers, and Customer companies. They included very few forward-looking statements in SEC submittals.

Some of the information disclosed by Suppliers suggested unfamiliarity with requirements of the SEC rule and evolving industry practice. This may not be surprising, given that many of the Supplier companies included in this research are based outside the U.S., and are not subject to SEC rules. Even so, the companies subject to DFCM are depending upon these Suppliers to provide them with information they need to comply.

In general, Suppliers had less information on conflict minerals commitments and programs on their websites than companies down the value chain. Although many Suppliers mention the CFSI, none selected for this research reported membership. Even those that mentioned the CFSI used relatively non-committal verbs (encourage, recognize), and were silent on substantive commitments to procure 3TG from smelters on the CFS list.

DHC suggests:

- conduct similar research of supplier companies,
- have more detailed discussions on your requirements and expectations
- recognize the risk posed by the gap between the Suppliers' relative lack of commitment to the CFS program and the important role it plays in progress for your company's conflict minerals program
- adjust Year Two supplier outreach programs for conflict minerals 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](http://www.douglashileman.com) for more on Mr. Hileman and his firm's services. See sister sites [www.DFCMAudit.com](http://www.DFCMAudit.com) and [www.DFCMTraining.com](http://www.DFCMTraining.com) for more information on conflict minerals.