
Conflict Minerals Reports for 2014 Reporting Period

Forward Looking Statements: 5 Tips for Year Two

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SEC filings for Dodd-Frank Conflict Minerals (DFCM) include a Form SD, and, for most of the affected public issuers, a Conflict Minerals Report (CMR). The SEC filings were first required for the 2013 reporting year.

The SEC Rule provided for two transition years. Key provisions of the transition years involved conclusions required in the CMR¹, and whether the Independent Private Sector Audit (IPSA) as described in the SEC Rule would be required during these years². The author notes that the transition period is also a tacit acknowledgement that compliance programs take time to evolve. “Year One” was a learning experience for everyone – public issuers, their suppliers, data management providers, consultants, auditors, and analysts alike.


Year One also ended with a look ahead. Many companies included a section in their CMRs such as “Future Steps to Mitigate Risks” or “Future Program Improvements.” Companies are now compiling their CMRs for the 2014 reporting year [filings are due Monday, June 1, 2015]. CMRs are likely to include more forward-looking statements. Here are five tips to make the most of these forward-looking statements, and avoid putting your company at risk.

1. **What did you say last year?** Last year’s forward-looking statements are a logical start. What did you complete, and what still needs attention? The author encourages filers to include progress on these steps in the appropriate section(s) of the CMR or Form SD. For example, if you indicated you would “engage with suppliers to improve response rate,” did you? Are you reporting on it in this year’s filings? If you have completed an action, it is no longer needed as a forward-looking statement. If you have not completed an action [“continue working with industry groups”], it may be useful again for the 2014 filing. In general, the filing will look better if Year Two’s forward-looking statements indicate more efforts than Year One.

¹ This has been subject to litigation. The outcome is pending as of this writing, but it is not the focus of this article.

² Unless the public issuer concluded that at least one product was found to be “DRC Conflict Free”, the requirement for an IPSA was waived for the transition period. Matters involving litigation could affect when – or if – the IPSA will be required after the conclusion of the two-year transition period.



2. **Align forward-looking statements with your customers' signals.** Your progress on conflict minerals depends upon your suppliers. So does your customer's progress. Review the Year One filings of your five largest customers. Review customer requests received so far this year. Align your forward-looking statements with what your customers expect.
3. **They're not in scope for IPSA – or are they?** The IPSA Objectives focus on the design of the due diligence framework, and whether the issuer took the steps they said they took. Normally, forward-looking statements would not be considered in scope for the IPSA. Consider, however, a forward-looking statement that says the company “will continue to improve data quality control efforts.” This implies that the company has taken such steps already. The IPSA Auditor may review your “Steps Taken” section to see if this is described. The IPSA Auditor may use this statement as a basis for including the entire section in scope. 
4. **Don't over-promise – or coast.** Stakeholders may review your Year Three filing to see if you took actions or accomplished goals as promised. If you set the bar too high, you may need to explain why you didn't achieve goals. If you set the bar too low, it can appear that you are not taking conflict minerals program seriously. Be realistic on your promises.
5. **Use forward-looking statements as an opportunity to get resources.** When you present your 2014 CMR to senior management for signature, call their attention to the forward-looking statements. Focus on forward-looking statements where you have resource needs. For example, are you planning to engage a data management vendor? Or develop a training program for employees? Are you considering an independent program review or IPSA readiness assessment? Will you require resources to improve engagement in industry associations? If your conflict minerals program needs resources to achieve these goals, use this as an opportunity to ask for the resources.

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