

5 Tips on Writing a Conflict Minerals Report
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SEC did not provide a template for the Conflict Minerals Report (CMR) in the final SEC rule, or in any of the FAQs. PwC released a [conflict minerals survey in April](#). **Fewer than 10%** of respondents had drafted their SEC filings (Form SD and CMR), and 63% had not even begun. With the Year One filing date fast approaching, here are five tips on writing a CMR.

- 1. Begin at the middle and work out.** The Dodd-Frank Conflict Minerals (DFCM) rule requires an Independent Private Sector Audit (IPSA) for issuers who make certain conclusions about their Democratic Republic of Congo (DRC) conflict status of their products. Provisions during the transition period [two years for most issuers], are such that most issuers will not require an IPSA during this period. Two-thirds of the respondents to the PwC survey indicated they did not believe they would need an IPSA in these two years. Nonetheless, it is worth structuring the CMR to anticipate what an IPSA will eventually require. IPSA Objective #2 requires the auditor to conclude or express an opinion as to whether the issuer actually did the steps they describe for their due diligence. In other words, did you really do what you said you did? So, begin with auditable portions of the CMR in one distinct section. Then, back up and write introductory information. Finally, move forward and write conclusions, determinations, and forward-looking statements.
- 2. Describing Due Diligence: make it simple, and avoid “tense situations.”** It can be tempting to put a lot of information in your description of due diligence. Consider this sentence: “Because Acme’s lines of business are varied, and we have over 3,000 suppliers, we began our intensive effort on conflict minerals in 2012, when we published a policy that we maintained and expect to improve in the coming years.” This sentence includes background information, rationale, statements of the steps taken, and intentions for the future. An auditor would have to pick this sentence apart for the portions that are only descriptions – or they could elect to audit everything in this sentence. The auditor could determine that the word “intensive” would be significant to the reader, and ask you to prove it. Stick to sentences with past tense verbs, such as “Acme published our first conflict minerals policy in 2012; it was effective for all of 2013.”
- 3. Be mindful of the reporting period.** The first effective year of the DFCM rule is calendar year 2013. Many companies have continued to develop their conflict minerals management program since the close of the reporting period (December 31, 2013) and before initial filings are due May 31 (June 2 in 2014). SEC’s FAQ 20 confirmed that issuers can continue beyond the calendar year. The author suggests being mindful of the reporting period, as outlined in a series of other downloads at www.DFCMAudit.com. Companies can continue to pursue necessary information

from suppliers on products manufactured in 2013. However, it may not be advisable to describe steps that were not actually taken during the reporting period. The author suggests the analogy of making tax-deductible charitable contributions. Between December 31 and the time you file your taxes, it's fine to search for your receipts – but you can't back-date a check for a contribution. Consult with SEC counsel and/or an IPSA Auditor if you have questions.

- 4. Choose metrics carefully.** Your company has likely been using many performance indicators to track progress on conflict minerals program development. Metrics might include: number of parts that include tin, tantalum, tungsten or gold (3TG); total number of suppliers; number of suppliers subject to DFCM; number of known smelters in your supply chain; percentage of spend that is known to include 3TG sourced from Covered Countries; the percentage of suppliers provided any type of response; the number of suppliers that provided valid response; the acceptance (or error) rate of responses from suppliers; or others. The SEC has not specified any metrics for the CMR or Form SD. Depending upon the metric (and an IPSA Auditor's view), they could be subject to audit. Including metrics in Year One CMR can create expectations that the metric will be reported on an ongoing basis. Further, metrics may not tell the story you intend. Consider two companies that both report they achieved a 60% response rate from their suppliers, but one-third of those were considered invalid responses. Acme – a company with 10,000 suppliers – may wish to report this data; they can take credit for actively managing 6,000 responses. Beta, on the other hand, has 30 suppliers. Readers could wonder why Beta had trouble getting responses from only 30 suppliers, and why it couldn't close gaps on the six responses it considered invalid. Even if Beta has good reasons, it may need to provide further explanations, or prepare to field questions from users. Use as many metrics as is helpful for internal management reporting, but the author suggests caution in selecting metrics for an SEC filing.
- 5. Realize you will be accountable for forward looking statements.** Many issuers will include statements in their CMR of steps they have taken or will take since the end of the reporting period to mitigate risk that their necessary 3TG benefit armed groups. 2014 is already well underway. Be prepared to provide meaningful updates in the 2014 CMR so analysts can see how well your company delivered on its promises.

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