



Five Practical Steps to Support SEC Conflict Minerals Disclosure

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Abbreviations

3T	tantalum, tin, tungsten
3TG	tantalum, tin, tungsten, gold
CC	Covered Country(ies) as defined by the United States Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
CFSI	Conflict-Free Sourcing Initiative
CFSP	Conflict-Free Smelter Program
CMR	Conflict Minerals Report
CMRT	Conflict Minerals Reporting Template
BGR	Bundesanstalt für Geowissenschaften und Rohstoffe (German Federal Institute for Geosciences and Natural Resources)
DRC	Democratic Republic of the Congo
EHS	Environmental health and safety
ICGLR	International Conference on the Great Lakes Region
IPSA	independent private sector audit
iTSCi	ITRI Tin Supply Chain Initiative
LBMA	London Bullion Market Association
OECD	Organisation for Economic Co-operation and Development
RCOI	reasonable country of origin inquiry
RJC	Responsible Jewellery Council
SEC	United States Securities and Exchange Commission
SOR(s)	smelter(s) or refiner(s)
UN	United Nations



Executive Summary

Profits from conflict minerals¹ found in the Democratic Republic of the Congo (DRC) have supported conflict, human rights violations and labor and environmental abuses in the region for years. Companies that use these minerals in the design and manufacture of their products and components – called “downstream” companies – are concerned about these abuses, and are taking action to avoid contributing to conflict in any way.

Working in collaboration, Downstream Companies have developed a variety of policies and processes to better understand the origin of these conflict minerals to facilitate responsible decision-making about sourcing. Companies’ actions alone cannot ensure security, improve governance or bring about peace in the region. However, by finding shared solutions to common challenges in sourcing, companies can ensure they have as positive an impact as possible on the people and communities associated with minerals.

This paper is intended as a practical guide for Downstream Companies that have reporting obligations about conflict minerals that may be used in their supply chains. This paper may also be helpful for suppliers to better understand their customers’ expectations and requirements. This paper is not a set of rules or a method for compliance with existing legislation. Rather, this paper seeks to provide clear explanations and practical tips for companies on how to understand the source of minerals in their supply chains and how that understanding can contribute to their required reporting.

Currently, three major bodies of work address conflict minerals reporting: the United States Dodd-Frank Wall Street Reform and Consumer Protection Act² of 2010 (Dodd-Frank Act); the related United States Securities and Exchange Commission Final Rule on compliance with Dodd-Frank³ (SEC Final Rule); and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas⁴ (OECD Guidance). This paper gives examples of how a downstream company may use the OECD Guidance to meet its SEC compliance and reporting requirements by correlating the OECD Guidance steps to the SEC compliance steps needed to meet U.S. reporting requirements.

Due to the fact that companies’ current conflict minerals reporting obligations are solely related to DRC conflict minerals, as defined in the Dodd-Frank Act, this paper focuses exclusively on DRC conflict minerals. Although the OECD Guidance applies to minerals from

¹ As defined in 2010 United States legislation, Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 1502(e)(4): “CONFLICT MINERAL.—The term “conflict mineral” means—
(A) columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives; or
(B) any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country.”

Full text available at: <http://www.gpo.gov/fdsys/pkg/BILLS-111hr4173enr/pdf/BILLS-111hr4173enr.pdf>

² Full text available at: <http://www.gpo.gov/fdsys/pkg/BILLS-111hr4173enr/pdf/BILLS-111hr4173enr.pdf>

³ Full text available at: <http://www.sec.gov/rules/final/2012/34-67716.pdf>

⁴ Full text available at: <http://www.oecd.org/fr/daf/inv/mne/mining.htm>

any conflict-affected or high-risk area, references in this paper to “conflict-free” should be understood as DRC conflict-free, which means the material does not directly or indirectly finance or benefit armed groups in the DRC.



The Conflict-Free Sourcing Initiative

The Conflict-Free Sourcing Initiative (CFSI) was founded in 2008 by leading electronics companies to provide resources and tools to help companies source conflict-free minerals. The CFSI maintains a website with relevant, updated tools and information (www.conflictreesourcinginitiative.org). Tools and resources available include white papers and best practices guidelines on conflict minerals sourcing and reporting, a conflict minerals reporting template that helps all companies gather necessary information, and a voluntary audit program for smelters and refiners that identifies mineral sources and helps companies to ensure they can source conflict-free minerals.

Included in the range of tools and resources offered by the CFSI is the Conflict-Free Smelter Program (CFSP), which helps companies assess the conflict status⁵ of smelters or refiners (SORs) that produced the tantalum, tin, tungsten or gold in their products.⁶ Downstream Companies can survey their suppliers to identify the SORs in their supply chains, and then compare those SORs with conflict-free smelter lists.⁷ These lists provide information to assess the conflict-free status of the processed minerals. In order to be included on the list of conflict-free smelters, SORs must undergo a third-party independent audit process developed by the CFSI with multi-stakeholder input to be consistent with the OECD Guidance. The ultimate intent of this program is to diminish demand for materials associated with funding conflict.

The Conflict-Free Smelter Program is not a certification program and it is not mandatory. Companies that source from SORs that have been found by the CFSP audit to be conflict-free are not automatically considered in compliance with Dodd-Frank. However, by sourcing from SORs on the CFSP conflict-free list, companies can go a long way toward meeting the requirements of Dodd-Frank and required reporting to the SEC.

Purpose, Intended Audience and Disclaimers

This paper is intended to assist Downstream Companies engaged in responsible sourcing to identify the sources of conflict minerals in their supply chains. By sharing these practices, the CFSI hopes a plurality of downstream entities will adopt similar practices, thus making conflict-

⁵ Conflict status here meaning whether trade in the minerals provided direct or indirect financial support for armed groups in the DRC.

⁶ Other methodologies also have been developed to determine the origins of defined conflict minerals in companies' supply chains. Examples of these methodologies include X.

⁷ The conflict-free smelter lists are available publicly at www.conflictreesourcinginitiative.org.



free sourcing more efficient and ultimately more effective at mitigating conflict. These practices are meant as examples only and in no way constrain other practices that may be employed to source conflict-free minerals in the supply chain. Downstream Companies may choose to use the tools and information provided by the CFSI in conjunction with the due diligence framework set out in the OECD Guidance to help them meet legislative requirements such as those of the SEC's Final Rule.

Both the OECD Guidance and the SEC Final Rule on conflict minerals recognize that a company's processes must be tailored to the particular facts and circumstances of the individual enterprise, taking into account size, complexity and supply chain characteristics. Thus, each downstream company must make its own judgment whether, based on its circumstances, conformance to this or any other set of practices satisfies its obligations under Dodd-Frank or as a responsible corporate citizen. This document is intended to provide general industry guidance and information. Customer needs for information about SORs in the multi-level supply chain will require all companies to participate in passing SOR data. The SEC-filing companies cannot describe their supply chains without the help of the non-SEC filing companies. Companies should always refer to the official texts of the SEC rule and the OECD Guidance, as appropriate, for full details on the requirements and/or recommendations contained therein. No part of this document constitutes legal advice, and the choice to use any part of this document is voluntary and made at the user's sole discretion.

Introduction

The SEC Final Rule embodies a three-step approach to Dodd-Frank compliance: the first step is determining applicability of the rule; the second step is conducting a "reasonable country of origin inquiry" ("RCOI") to determine whether there is reason to believe that conflict minerals from the DRC or an adjoining country⁸ (Covered Countries, or CC) are present in a company's products; and, if so, the third step is conducting due diligence to determine the source and origin of those conflict minerals and the facilities (SORs) in which they were processed. Companies requiring due diligence must use a nationally or internationally recognized standard such as the OECD Guidance in order to meet their compliance and reporting obligations. The OECD Guidance was written for all companies across the supply chain (miners, smelters, manufacturing and retail) to provide recommendations concerning steps those companies could take to respect human rights and avoid contributing to conflict through their metal sourcing / procurement practices.

This paper gives examples of how a downstream company may use the relevant parts of the OECD Guidance to meet its SEC compliance and reporting requirements by correlating the OECD Guidance steps to the SEC compliance steps needed to meet U.S. reporting

⁸ An adjoining country is defined as a country that shares an internationally recognized border with the Democratic Republic of the Congo. There are nine of these countries: Angola, Burundi, Central Africa Republic, Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, Zambia. The adjoining countries plus the DRC are altogether called "Covered Countries" in Dodd-Frank.

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requirements. As a result, it is organized along the lines of the five steps set out in the OECD Guidance and elaborates on which processes described at each step are appropriate for Downstream Companies in accordance with the Guidance, as further explained by the OECD Guidance 3T Supplement⁹, and within the SEC Final Rule.

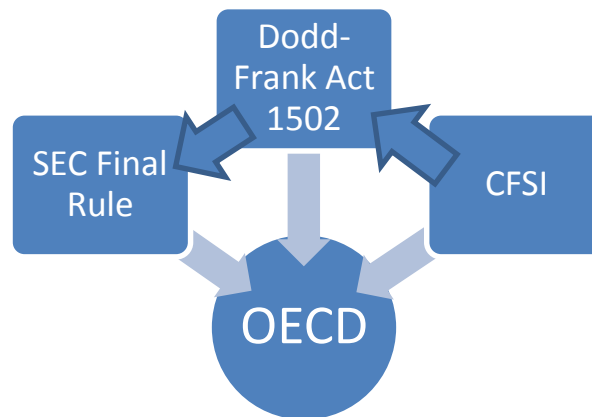


The OECD Guidance is written for the entire mineral supply chain, and includes detailed recommendations for companies in both the upstream and downstream segments of the supply chain. When describing practical implementation steps for Downstream Companies, it is important to distinguish their role from the role of upstream companies. Downstream Companies are typically several tiers removed from SORs and, when acting individually, Downstream Companies have no visibility beyond their direct supplier to companies in the upstream supply chain, in part because suppliers consider their sub-suppliers' information confidential. Furthermore, Downstream Companies likely have no direct visibility to SORs and the mine of origin. Therefore, it is necessary to highlight where there may be specific approaches relevant to Downstream Companies before providing an interpretation of the steps set out in the OECD Guidance. Specifically:

Downstream Companies need to take into consideration the facts and circumstances of their position several tiers removed from SORs when looking at the OECD Guidance discussion of risk assessment and risk management. Given their place in the supply chain, Downstream Companies **with no direct relationships with an SOR** possess no independent means of determining the source and origin of conflict minerals ores processed by SORs.

The OECD Guidance was written with the intent of defining a process and continued improvement. This paper was written to interpret the OECD process in a form that is relevant to Downstream Companies several tiers removed from the SOR.

Step 1: Build a Company Conflict Minerals Program Framework



⁹ This supplement can be found within the Guidance document.



Because the §1502 of the Dodd-Frank Act implicitly references the OECD Guidance, the SEC Final Rule and CFSI as implementing programs also relate directly to the OECD Guidance. This section describes how companies may want to structure their supply chain transparency programs. It includes elements outlined in OECD Guidance Step 1 and will help organizations establish the frameworks they need to implement their conflict minerals programs. Step 2 is about identifying and assessing risks in the supply chain. Next, Step 3 describes designing and implementing a strategy to respond or mitigate those risks. Step 4 asks companies to support an industry initiative, such as the CFSI's Conflict-Free Smelter Program, to audit smelters' and refiners' due diligence practices. Finally, Step 5 is a public reporting provision.

A. OECD Guidance Step 1: Management systems

The first step that the OECD Guidance sets out for Downstream Companies is to establish management systems to support the execution of a company-wide conflict minerals program that operates efficiently and is sustainable into the future. Companies' conflict minerals management systems should address the risk that the tantalum, tin, tungsten and gold contained in their final products originated within a conflict-affected area. To help companies meet their requirements for compliance with the SEC Final Rule, this document discusses the OECD Guidance as it applies to the DRC and adjoining countries.

The following elements of a management system as contemplated by the OECD Guidance may be appropriate for Downstream Companies:

1. Adopt a conflict minerals company policy.

A policy is a management or procedure based primarily on material interest.¹⁰ A company's conflict minerals policy may establish and communicate conflict minerals goals that are reasonable and achievable. This policy thus forms the expectations to which the company holds itself and its supply chain accountable. A company need not specifically use the terms "policy" or "conflict minerals policy" to designate its principles, provided that the company makes clear its guiding principles for dealing with the issue. A company may also consider the OECD Guidance model policy where there are examples of abusive practices and exploitation that are considered as supporting conflict. The model policy also covers topics beyond the scope of the SEC rule and direct action to mitigate the referenced issues.

The policy may include one or more of the following:

- Principles regarding the use of tantalum, tin, tungsten and gold (3TG) from conflict-affected areas.

¹⁰ Source: Merriam-Webster Dictionary

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- Intent to support conflict-free sourcing.
- Communication of the company's conflict minerals program goal(s) (e.g., DRC conflict-free, responsible in-region sourcing, preference for CFSP-compliant SORs).
- Actions that the company will take to support its policy and goals.
- Broad expectations of its relevant suppliers to support the company's goals.

RCOI and possibly the due diligence practices that the company will employ to implement its policy may be contained in the policy itself. These elements may also be found in a separate document, such as implementing guidelines or standard operating procedures, as may be consistent with the company's normal practice.

The policy may be shared publicly, such as by posting to a company website. The policy may also be communicated to its relevant suppliers by appropriate measures, such as contracts, as a means to communicate its goals and high-level supplier expectations.

The policy may form the basis for creating a conflict minerals management system and may be included in Form SD (Specialized Disclosure) as part of SEC reporting.

2. Assemble an internal team.

The company should assemble an internal team of relevant subject matter experts from functional areas that may include engineering, design, finance, IT, procurement, communications, legal and/or environmental, health and safety (EHS) to develop a conflict minerals program that implements the policy and oversee the company' program. This team should also have senior management support. It may be effective to incorporate concepts from other corporate management system processes to provide the necessary structure to support the creation, implementation and monitoring of an effective conflict minerals program. The internal team should be assigned the necessary authority and resources to establish an appropriate organizational structure and communication process to ensure execution of the company policy.

The internal team may be chartered with the following tasks:

- Establish an organizational framework to meet the expectations set forth in the policy. The framework and policy should be complementary and aligned to enable execution.
- Create a company-specific conflict minerals implementation plan. The plan should integrate the company's chosen nationally or internationally recognized due diligence guidance.
- Judge the progress, effectiveness and execution of the policy and implementation plan.
- Periodically communicate program status and effectiveness to senior management.



3. Establish a system of controls and transparency over the conflict minerals supply-chain.

Downstream Companies should establish systems of controls and transparency over conflict minerals supply chains. This can be achieved by creating a process to engage relevant first-tier suppliers and request information, including information gathered by those suppliers about the SORs identified in their own supply chains.¹¹ OECD Guidance suggests that companies, “[i]ntroduce a supply chain transparency system that allows the identification of SORs in the company’s mineral supply chain,”¹² although there may be other ways to establish a system of controls and transparency over the conflict minerals supply chain.

The goal of the control and transparency system is to collect and retain the necessary information supportive of the company’s implementation framework, as well as to provide information necessary to meet legal reporting requirements.

Companies may find it helpful to store relevant records in an electronic database. Information gathering systems should be capable of maintaining related records in accordance with the company’s specific records retention policy, or for a minimum period as required by law. OECD Guidance specifically suggests maintaining records for a minimum of five years and preferably in a computerized database.¹³

4. Strengthen engagement with relevant suppliers.

Downstream Companies should enlist the support of their relevant first-tier suppliers in executing conflict minerals programs. This can take place through such means as incorporating expectations regarding suppliers’ conflict minerals policies, processes and disclosure of relevant information into supplier contracts or other relevant documents. However, companies should avoid contract language requiring a guarantee/certification that their suppliers do not use 3TG that benefited armed groups, and seeking liability and product recall indemnity in conjunction with the guarantee should be avoided. In some cases, a supplier may use processes similar to those employed by its customer with respect to the creation of a conflict minerals policy and implementation plan. Capacity building through means such as seminars and distribution of reference material is recommended in order to help relevant suppliers and SORs improve performance and enable them to comply with the OECD Guidance related to upstream companies. This assists suppliers in meeting their own legal reporting requirements while supporting their customers’ expectations. Relevant supplier engagement is necessary to enable the execution of OECD Guidance Step 2.

¹¹ See OECD Guidance Step 2 for further information: <http://www.oecd.org/daf/inv/mne/mining.htm>.

¹² pp. 39

¹³ pp. 39



5. Establish a company grievance mechanism

According to the OECD Guidance 3T Supplement, companies may, depending on their position in the supply chain, institute an individual or a collaborative industry grievance mechanism. This is more appropriate for upstream companies between and including the mine of origin and SORs, because they are more likely to have knowledge of conflict financing/risk of conflict. Downstream Companies of SORs would not have visibility to SORs or to mineral supply chains. In addition, concerned parties would not typically have information that would trace minerals from SORs to Downstream Companies.

Nevertheless, in the course of executing its implementation plan, a downstream company may wish to provide a mechanism to allow concerned parties to provide information that may contradict information that was received through its supply chain. In such cases, it may be useful to provide any concerned party the opportunity to communicate its concerns regarding the accuracy of such information or additional relevant information that may not have been uncovered in the implementation process. The open reporting mechanism may be specific to the conflict minerals topic, or companies may extend the scope of their current open reporting systems to include conflict minerals. Examples may include company's ombudsman contact, supplier relationships department contacts, or a company's ethics hotline.

Due to a downstream company's relative location within the supply chain in relation to the actual extraction and transport of ore, its ability to verify the accuracy of information may be limited – potentially rendering its response to the risk also limited.

B. SEC Requirements Compared with Step 1

The SEC Final Rule does not set out requirements for how a company should organize itself internally in support of conflict minerals program implementation. Nevertheless, it may be appropriate for a company to align its conflict minerals program implementation process with OECD Guidance Step 1, since doing so may enable the company to implement a conflict minerals management system that conforms to an internationally recognized framework.

Step 2: Explore Risks in the Supply Chain

This section describes practices that comprise reasonable design and good faith execution of an RCOI as set out in the SEC Final Rule, using Step 2 of the OECD Guidance framework as a guide. As noted in the Introduction, each step of the OECD Guidance must be considered in the specific context of a downstream company, distinguishing those elements of the OECD Guidance that are appropriate only for Downstream Companies.



A. OECD Guidance Step 2

OECD Guidance Step 2 outlines elements that are intended to be covered by companies in the upstream and downstream to the extent practicable. While the OECD Guidance provides specific and separate recommendations for upstream and Downstream Companies, some of these steps specified for Downstream Companies are more relevant to Downstream Companies that have direct relationships with SORs as compared with companies further removed from SORs in the supply chain. In summarized form, Downstream Companies should:¹⁴

- Identify “to the best of their efforts” SORs in their supply chain.
- Engage with SORs to obtain mine of origin and transit routes.
- Assess whether SORs have carried out all elements of due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas.
- Where necessary, carry out, including through participation in industry-driven programs, joint spot checks at the SORs’ own facilities.

Downstream Companies are not in a position to obtain mine of origin or transit routes, or to carry out spot checks with respect to SORs with which they do not have business relationships. The Gold Supplement to the OECD Guidance suggests that for those companies that purchase gold bars, the refiner should be identified by the stamp on the gold bar.¹⁵ In order to clarify practical steps that are relevant to Downstream Companies more than one tier removed from SORs, this guide considered as a starting point the ‘practical common steps’ provided by the downstream 3T OECD Guidance pilot participants, which were incorporated into the OECD’s report of the pilot program.

Another important distinction between the OECD Guidance responsibilities of upstream and Downstream Companies is in how risk is defined and the appropriate elements of risk management that are implied by the document. The focus of risk management within the OECD Guidance is the identification of “red flag” triggers that are exclusively upstream of the SOR. Therefore, risk identification and risk management for a downstream actor is relevant when an SOR has been identified by a credible third party to source minerals that directly or indirectly supported armed groups. The risk management action by the downstream actor involves influencing the multi-tiered supply chain to cause the SOR to become validated as conflict-free (such as by the Conflict-Free Smelter Program of the Conflict-Free Sourcing Initiative) or, failing that, to switch to a different smelter.¹⁶ Depending upon the number of supplier tiers by which a company is removed from the smelter, it may be expected that it could take months or years to affect change. In many cases, the nature of the company’s

¹⁴ See OECD Guidance pp. 42 for full text.

¹⁵ See OECD Guidance pp. 97

¹⁶ The SEC Final Rule does not require elimination of conflict-supporting minerals from supply chains, but only that their presence be accurately disclosed and reported.



commercial relationships may not allow it individually to influence the SOR's conduct. Instead, a single downstream company may choose to leverage the accumulated responses of many Downstream Companies in order to assert sufficient pressure on the SOR to adjust its practices.

The OECD Guidance describes a process for sharing and assessing information. The focus is on implementing a process rather than accomplishing a specific result. This strategy is also very relevant to Downstream Companies that are several tiers of suppliers removed from SORs. As such, Downstream Companies need to cause first-tier suppliers with which they have a business relationship to obtain information from sub-suppliers and sub-sub-suppliers to which the downstream actor has no direct access.

What this means in practicality is that a downstream actor applies a process and expectations at the top of the supply chain, and it is likely that it could take years of engagement and propagation of expectations through many tiers of the supply chain before the information returned to that downstream actor may be considered accurate and complete. However, what is most important is not that the information is complete straight away, but that the completeness of information improves over subsequent years.

Finally, the facts and circumstances of different suppliers in a downstream actor's supply chain should be considered based on materiality when prioritizing efforts. In essence, implementing the OECD Guidance steps is a journey that will provide incremental improvements over time, rather than a direct path to a definitive endpoint. Furthermore, because of the number of factors between Downstream Companies and SORs, it is possible that there may never be certainty of completeness or accuracy.

B. Practical interpretation of OECD Guidance Step 2 for Downstream Companies

The discussion below is an attempt to interpret the OECD Guidance Step 2 sub-steps if a company were to implement the OECD Guidance without the context of the SEC Rule.¹⁷ These sub-steps primarily follow the "practical common steps" provided by the downstream 3T OECD Guidance pilot participants.¹⁸ In addition, the OECD Guidance also emphasizes how recommendations can be carried out individually or collectively, depending on the size of the company, its position in the supply chain and other companies. Members of the Conflict-Free Sourcing Initiative have recognized this benefit and work collectively to develop tools, processes, training, awareness and outreach.

¹⁷ The SEC Final Rule does not require elimination of conflict-supporting minerals from supply chains, but only that their presence be accurately disclosed and reported.

¹⁸ For more on the Guidance pilot, see <http://www.oecd.org/daf/inv/mne/implementingtheguidance.htm>.



1. Identify relevant or highest priority first-tier suppliers.

Downstream Companies may identify relevant or highest priority first-tier suppliers that supply products that contain 3TG. A downstream company's supply chain may be quite diverse; therefore, a company may employ the engagement approach and inquiry frequency that is appropriate for the breadth and depth of its supply chain. Inquiries may be conducted annually or may include additional reviews based on such factors as significant changes in product line or supply base.

Companies may use any of the following methods to identify the relevant suppliers that contribute 3TG to their final products:

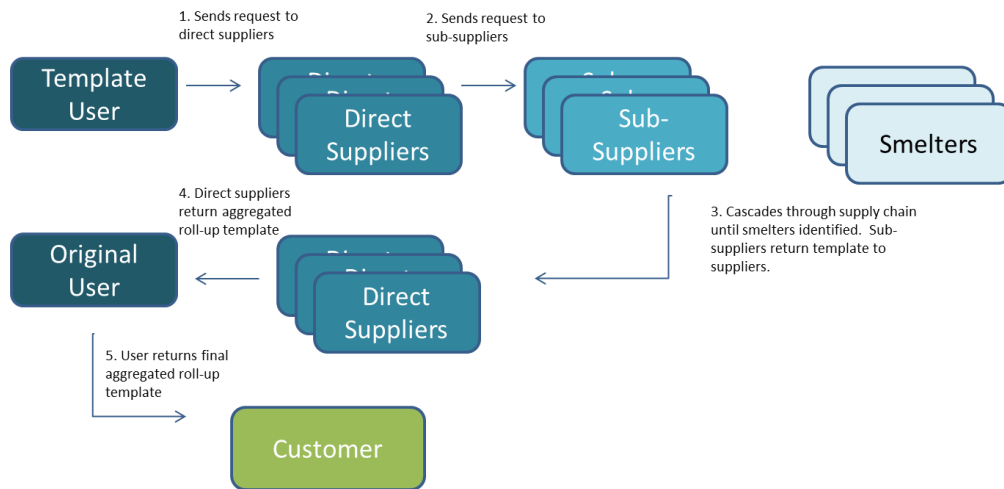
- Identify products that contain 3TG by reference to bills of materials or product composition data, or by qualitative or other reasonable means.
- Identify relevant purchased materials for those products.
- Identify suppliers of the relevant purchased materials.
- Prioritize relevant suppliers using relevant factors (e.g., geographic location, annual volume of 3TG contained, annual spend, proximity of first-tier supplier to SOR, type of mineral).
- Consider representation and coverage across product lines and supplier categories.

2. Request information from relevant first-tier suppliers.

Downstream Companies should request information from relevant suppliers to identify SORs in the supply chain. This may be achieved by using industry data collection tools such as the CFSI Conflict Minerals Reporting Template (CMRT),¹⁹ or IPC-compatible standard protocol for data format. Some companies with large supply chains may choose to gather information from their suppliers using a contract flow-down approach following suppliers' consent, or to adopt a combination of the two methods. Companies may request suppliers to propagate similar expectations to their sub-suppliers.

¹⁹ Available at <http://www.conflictreesmelter.org/ConflictMineralsReportingTemplateDashboard.htm>.

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3. Review information provided by relevant first-tier suppliers.

Downstream Companies may review information to assess the reasonableness of the representations its suppliers have made. Downstream Companies can assess a supplier's responses to understand what steps the supplier is taking in conducting activities regarding 3TG and to understand which SOR facilities that process 3TG are present in the supplier's own supply chain.

Companies may use any of the following methods when reviewing supplier representations:

- Review information relative to the expectations established by the company (e.g., Did the supplier adopt its own conflict minerals policy?).
- Review the responses for completeness.
- Review the response for reasonableness – that is, whether the response is consistent with the downstream company's knowledge of the supplier.

Downstream Companies may follow up with suppliers to provide feedback on what is acceptable and not acceptable with their representations.

Downstream Companies may choose to focus on priority or strategic suppliers first, recognizing that obtaining adequate information from all suppliers could take years. The facts and circumstances of each downstream company's supply chain should be considered when prioritizing efforts. Again, when implementing the OECD Guidance steps, companies should consider their progress incremental in nature, rather than immediate. Because of the number of tiers between Downstream Companies and SORs in their supply chains, it is possible that there may never be certainty of completeness or accuracy.



In addition, as there are only a few hundred SORs of the 3Ts in the world and on the order of 100 large-volume gold refiners, companies with large supply chains are likely to see that all or a very substantial proportion of the total SOR population is present in their supply chains. At this point, there is limited value added by identifying which smelters are used by particular suppliers. The most effective strategy for such Downstream Companies therefore may be to concentrate efforts on those segments of their supply chains in which they have the greatest ability to encourage SORs to engage in a verification program.

Downstream Companies may provide capacity building with relevant first-tier suppliers to improve responses. Individual companies, or groups of companies working through an industry association, may use any of the following methods for capacity building:

- Training the company or industry on expectations regarding conflict minerals.
- Providing industry tools (such as those provided by the CFSI) and reference materials.
- Using a common database, such as the CFSI's Smelter Information Exchange and Smelter Engagement Team.
- Communicating company policies regarding conflict minerals.
- Including conflict-minerals information review for completeness and accuracy may be included in supplier audits.

4. Compare SORs identified by the supply chain to assess possible risk.

Downstream Companies should compare the names of the 3TG processing facilities identified in supplier representations to independently verified lists (e.g., the CFSI Conflict-Free Smelter Program list, the London Bullion Market Association Good Delivery program or the Responsible Jewellery Council Chain-of-Custody Certification). Companies may also use other sources of information to assess potential risk, such as:

- A self-declaration from a direct communication with a SOR or its website.
- News articles, investment reports, and or industry association information that may indicate where a SOR sources.
- For SORs not independently verified, the likelihood that they are sourcing minerals from a conflict-affected area based on their geographic location or other information.
- Whether the SOR is known to be sourcing from a conflict-affected area, or is located in a high-risk country suspected of processing conflict minerals from a conflict-affected area (e.g., based on available public reports, UN Group of Experts on the Democratic Republic of the Congo²⁰).
- Direct information that a company may have about an SOR regarding its sourcing practices.

²⁰ For more information on the UN Group of Experts, see <http://www.un.org/sc/committees/1533/egroup.shtml>.

C. OECD Step 2 relationship to SEC requirements

This section describes how implementation of and outputs from OECD Guidance Step 2 can be utilized to support compliance reporting under the SEC Final Rule.



1. Reasonable Country of Origin Inquiry (RCOI)

An issuer is expected to conduct a reasonable country of origin inquiry (RCOI) to determine if there is reason to believe that conflict minerals necessary to the functionality or production of a product manufactured or contracted to be manufactured by an issuer may have originated in a Covered Country(CC), including whether they may have come from recycled or scrap sources. One-hundred percent certainty is not required.²¹

The RCOI involves determining if the company has reason to believe that SORs in its supply chain are sourcing minerals from a CC. All of the OECD Guidance steps described above could support a downstream company's RCOI.

Specifically, RCOI information could be derived from Step 2C review information provided by a company's relevant first-tier suppliers:

- Representations from relevant suppliers could indicate the names of SORs in that supplier's supply chain.
- Representations from relevant suppliers could indicate the mine of origin associated with an SOR, which could indicate whether the facility sources from a CC.
- Representations from relevant suppliers could indicate whether or not the SOR solely processes recycled or scrap materials.

Specific RCOI information can be derived from Step 2D by comparing SORs identified in the supply chain with lists of verified facilities, or by assessing other available information to determine possible origin.

After the development of a list of SOR names provided by relevant suppliers, a downstream company can evaluate those facilities based on the information available, in order to determine whether it is reasonable to believe that they are sourcing from a CC. Examples of information a downstream company could use include:

- The SOR is on a verified list (such as the CFSP list).
- The SOR is not likely sourcing minerals from a CC based on its geographic location.
- The SOR is known to be sourcing from a CC (e.g., based on available public reports).
- A company has direct information about an SOR regarding its sourcing practices.

²¹ See SEC Final Rule, pp. 141

It is worth noting that the SEC does not require certainty but rather a reasonable process designed to yield reasonable results.



Step 3: Develop a Risk Management Plan

The objective of this section is to describe the relevant approaches for Downstream Companies implied by the OECD Guidance Step 3, and then to describe how the outcomes of implementing the OECD Guidance Step 3 may fulfill SEC compliance obligations.

A. OECD Guidance Step 3: Strategy to respond to identified risks

To provide context, below is a review the OECD Guidance definition of risk management and red-flag triggers along with excerpts of the letter signed by the participants in the ICGLR-OECD-UN GoE multi-stakeholder forum for conflict-free mineral supply chains.

The OECD Guidance is based upon identifying and managing risks associated with the mineral supply chain. The OECD Guidance defines “red-flag triggers” that, when actuated, obligate companies in the supply chain to conduct due diligence in a manner consistent with the OECD Guidance. The OECD Guidance defines red-flag triggers as follows:

“Red flags triggering the application of this supplement

This Guidance applies to companies operating in a conflict-affected and high-risk area, or potentially supplying or using tin (cassiterite), tantalum (tantalite) or tungsten (wolframite), or their smelted derivatives, from a conflict-affected and high-risk area. Companies should preliminarily review their mineral or metal sourcing practices to determine if the Guidance applies to them. The following red flags should trigger the due diligence standards and processes contained in this Guidance:

Red flag locations of mineral origin and transit:

- *The minerals originate from or have been transported via a conflict-affected or high-risk area.*
- *The minerals are claimed to originate from a country that has limited known reserves, likely resources or expected production levels of the mineral in question (i.e., the declared volumes of mineral from that country are out of keeping with its known reserves or expected production levels).*
- *The minerals are claimed to originate from a country in which minerals from conflict-affected and high-risk areas are known to transit.*



- *[from the Gold Supplement] The gold is claimed to originate from recyclable/scrap or mixed sources and has been refined in a country where gold from conflict-affected and high-risk areas is known or reasonably suspected to transit.*

Supplier red flags:

- *The company's suppliers or other known upstream companies have shareholder or other interests in companies that supply minerals from or operate in one of the above-mentioned red flag locations of mineral origin and transit.*
- *The company's suppliers or other known upstream companies are known to have sourced minerals from a red flag location of mineral origin and transit in the last 12 months.*

If a company in the supply chain is unable to determine whether the minerals in the company's possession come from a "red-flag location of mineral origin or transit," it should proceed to Step 1 of the Guidance."

This section is reproduced here to highlight that all of the red-flag triggers are contained in the upstream portion of the supply chain (e.g., SORs and mine of origin). These triggers relate to known locations of mineral transit, known mineral trade by a supplier, or lack of knowledge by a processor or trader whether the minerals it is purchasing came from a red flag location. This idea that risk management is associated with red flags in the upstream supply chain is further supported by the preamble of the 3T Supplement on page 32 of the OECD Guidance:

"Scope and definitions

This Supplement provides specific guidance on supply chain due diligence of tin, tantalum and tungsten (hereinafter minerals) from conflict-affected or high-risk areas according to the different positions in the mineral supply chain. It distinguishes between the roles of and the corresponding due diligence recommendations addressed to upstream companies and Downstream Companies in the supply chain.

For the purposes of this Supplement, "upstream" means the mineral supply chain from the mine to smelters/refiners. "Upstream companies" include miners (artisanal and small-scale or large-scale producers), local traders or exporters from the country of mineral origin, international concentrate traders, mineral re-processors and smelters/refiners. The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and this Supplement on Tin, Tantalum and Tungsten (hereafter "Guidance"), recommends, among other things, that these companies establish a system of internal control over the minerals in their



*possession (chain of custody or traceability) and establish on-the-ground assessment teams, which may be set up jointly through cooperation among upstream companies while retaining individual responsibility, for generating and sharing verifiable, reliable, up-to-date information on the qualitative circumstances of mineral extraction, trade, handling and export from conflict-affected and high-risk areas. **This Guidance calls on these upstream companies to provide the results of risk assessments to their downstream purchasers and have the smelters/refiners' due diligence practices audited by independent third parties, including through an institutionalised mechanism.***

*“Downstream” means the minerals supply chain from smelters/refiners to retailers. “Downstream Companies” include metal traders and exchanges, component manufacturers, product manufacturers, original equipment manufacturers (OEMs) and retailers. **The Guidance recommends, among other things, that Downstream Companies identify, to the best of their efforts, and review the due diligence process of the smelters/refiners in their supply chain and assess whether they adhere to due diligence measures put forward in this Guidance. Downstream Companies may participate in industry-wide schemes that assess smelters/refiners' compliance with this Guidance and may draw on the information these schemes provide to help them fulfill the recommendations in this Guidance.***

This distinction reflects the fact that internal control mechanisms based on tracing minerals in a company's possession are generally unfeasible after smelting, with refined metals entering the consumer market as small parts of various components in end products. By virtue of these practical difficulties, Downstream Companies should establish internal controls over their immediate suppliers and may coordinate efforts through industry-wide initiatives to build leverage over sub-suppliers, overcome practical challenges and effectively discharge the due diligence recommendations contained in this Guidance.”

The bold highlights, added here in this paper, are provided for emphasis in clearly identifying where the risk assessment responsibility lies: with SORs and upstream companies. Downstream Companies mitigate risk through working with their direct suppliers individually or collectively to identify SORs and encourage those SORs to become independently audited. In the letter from the ICGLR-OECD-UN GoE multi-stakeholder forum for conflict-free mineral supply chains it describes what constitutes “DRC conflict free” from an OECD Due Diligence implementation perspective. The examples below contemplate a direct supplier relationship with an SOR. Of course, companies in different sections of the supply chain will have different timelines based on their unique circumstances.

- *Any description of the products that contain minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country*



*(“not DRC conflict-free” as defined under section 1502 of the Dodd-Frank Act), should be regarded as “non-compliant with OECD and UN GoE recommendations”, meaning products for which **due diligence has not been carried out in accordance with these internationally agreed standards**; and*

- *As a time-bound measure, issuers **should not describe a product as not “DRC conflict free” when the issuer and the mineral processor have (i) taken reasonable steps and made good faith efforts in accordance with the OECD and UN GoE due diligence recommendations to conduct due diligence on the minerals in that product; and (ii) know and can show that they have identified, assessed and responded to risks in accordance with the risk management strategies recommended by the OECD and UN GoE due diligence recommendations.** Where risks of direct or indirect support to public or private security forces are identified and issuers and mineral processors decide to continue trade while pursuing risk mitigation, they should demonstrate significant measurable improvement within six months from the adoption of the risk management plan and have their due diligence practices audited by an independent third party. If within six months from the adoption of the risk management plan there is no significant measurable improvement, issuers and mineral processors should discontinue engagement or suspend the relationship with the supplier for a minimum of three months. Suspension may be accompanied by a revised risk management plan, stating the performance objectives for progressive improvement that should be met before resuming the trade relationship. Under the OECD and UN GoE due diligence recommendations, mitigation is not allowed in case of risks of serious human rights abuses associated with the extraction, transport or trade of minerals or where risks of direct or indirect support to non-state armed groups are identified in the supply chain; and*
- *Section 1502 of the Dodd-Frank Act provides that a product may be labeled as DRC conflict-free if the product does not contain conflict minerals that directly or indirectly finance or benefit armed groups in the DRC or an adjoining country. Issuers may label products as “DRC conflict free” when the issuer and the mineral processor have (i) taken reasonable steps and made good faith efforts in accordance with the OECD and UN GoE due diligence recommendations to conduct due diligence on the minerals in that product; and (ii) know and can show that they do not tolerate nor by any means profit from, contribute to, assist with or facilitate the commission by any party of serious human rights abuses associated with the extraction, transport or trade of minerals and do not provide direct or indirect support to non-state armed groups or public or private security forces, consistent with OECD and UN GoE due diligence recommendations.*

Note that regardless of your findings, your Due Diligence should include mechanisms to mitigate the risk identified, if any, in the process.



B. Risk management versus RCOI versus due diligence

First, the OECD Guidance recognizes that the SOR and other upstream companies have the primary role in managing risk that minerals may have supported conflict, and that the SOR/upstream actor must act when there is a red-flag trigger. Similarly, the SEC sets a trigger for Downstream Companies to conduct due diligence when an SOR in its supply chain is sourcing from the DRC or adjoining countries. In essence, the SEC Final Rule sets a red-flag trigger that is consistent with the OECD Guidance. Finally, the OECD risk assessment and management is primarily owned by the smelter, and the Downstream Companies' role is to assess smelters' due diligence and outcome based on an independent audit.

Downstream Companies have a role in driving effective supplier engagement to obtain a list of smelters that are used in their supply chain. However, the completeness of that list of smelters is advanced through the RCOI process and is not considered a part of risk management as contemplated by the OECD Guidance. Furthermore, because there are only a limited number of 3T SORs and on the order of 100 large-volume gold refiners in the world, it is likely that obtaining reasonable representations from an appropriate subset of suppliers could identify substantially all SORs in a company's supply chain.

C. Practical interpretation of OECD Guidance Step 3 for Downstream Companies

Based on the context discussed above, the following practical steps are implied by the OECD Guidance for Downstream Companies that are at least one tier removed from SORs. After establishing a strong management system and assessing supply chain risks in Steps 1 and 2, companies should design and implement a response strategy to those risks according to Step 3. That response strategy is discussed here.

1. Report findings to designated senior management.

After a downstream company has undertaken Step 2C (to identify the SORs in its supply chain) and Step 2D (to understand from which countries those SORs are sourcing, if that information is available and has been provided), the downstream company will have a table of SORs and may have associated origin of conflict minerals ores. Based on this information, a downstream company would have a list of SORs that could include either unknown country sourcing, known sourcing from conflict-free sources or known sourcing from conflict-affected areas. This table and actions that the company can take to investigate the SORs' due diligence and sourcing practices may be reviewed with senior management.



2. Devise and adopt a risk management plan.

The active risk management contemplated by the OECD Guidance is the responsibility of the SOR. The downstream company responsibility is to work through its supply chain to understand what facilities are in its supply chain, and to determine if more investigation is required. Below are examples of situations where a downstream company may conduct additional investigations to understand the relevant facts and circumstances.

- "Closed pipe" situation: If a downstream company is knowingly sourcing from a "closed pipe" program where the SOR is not in an independently verified system such as the CFSP, then the company may want to document or refer to a central repository of information that contains the following:
 - Description of the source.
 - Information on the chain of custody.
 - List any certification by regional bodies.²²
 - Description of any other aspects of "due diligence on the source and chain of custody."²³
- If a downstream company knows or has reason to believe that an SOR in its supply chain is sourcing from a conflict-affected area, other than a closed pipe program, the downstream company may conduct an investigation into the SOR's due diligence. This may be via an institutional mechanism²⁴ or through an independent validation scheme, as described in Step 3C below.

When a downstream company has identified SORs that meet one of the two conditions listed above, the downstream company may consider adopting a management plan to encourage or require relevant first-tier suppliers to:

- Encourage or require the SORs from which they source directly to participate in an independent validation scheme or institutional mechanism.
- Encourage or require the SORs further upstream in their supply chains to participate in an independent validation scheme or institutional mechanism.

3. Implement the risk management plan, monitor and track performance of risk mitigation, report back to designated senior management and consider suspending or discontinuing engagement with a supplier after failed attempts at mitigation.

The OECD only provides specific expectations for upstream companies in this step and is silent on specific expectations for Downstream Companies. The role for Downstream Companies in

²² Examples include the [ITRI Tin Supply Chain Initiative \(iTSCi\)](#), the [International Conference on the Great Lakes Region](#) and the [Bundesanstalt für Geowissenschaften und Rohstoffe \(BGR\)](#).

²³ Source: SEC Final Rule

²⁴ See OECD Guidance pp. 69



this step is to consider building due diligence capacity, awareness and engagement with SORs and to take measures to investigate an SOR's due diligence, directly or collectively. These activities may be conducted through industry programs, independent validation programs or an institutional mechanism. Because Downstream Companies typically do not have business relationships with SORs, it may be difficult to obtain reliable information. A downstream company may consider taking the following steps when it knows or has reason to believe that SORs in its supply chain are sourcing from a conflict-affected area:

- Engage in industry and stakeholder efforts to encourage the SOR to improve due diligence, by means of:
 - industry or stakeholder initiatives that provide independent assessments of the conflict minerals status of SORs, such as the CFSI Conflict-Free Smelter Program.
 - industry, stakeholder and individual efforts to request SORs to provide information about their due diligence practices and risk management.

If an SOR that is in the downstream company's supply chain has been identified by a credible organization to be sourcing minerals that directly or indirectly support armed groups, then the company may establish escalation steps for mitigation. As is consistent with competition principles, the company may work through industry groups or other means to identify where the SOR is used and work through its immediate suppliers to encourage that facility to mitigate the risk. Depending upon the number of suppliers that use this facility and by how many tiers the supplier is removed from the company, mitigating the risk could take months or years.

4. Undertake additional fact and risk assessments for risks requiring mitigation, or after a change of circumstances.

Step 3D is intended to ensure that identified risks are adequately mitigated and that the information gathered in Steps 2C and 2D is supplemented as the company's supply chain evolves over time. If the sourcing of an SOR is unknown or from a conflict-affected area, then the downstream company must conduct Step 3c to assess the SOR's sourcing location and/or its due diligence if it sources from a conflict-affected area.

D. SEC requirements compared with OECD Step 3

This section describes how implementation of and outputs from OECD Guidance Step 3 can be utilized to support compliance reporting under the SEC rule.

The SEC Final Rule establishes a trigger for assessing the due diligence of an SOR. That trigger is defined as when the SOR sources from a CC or if the sourcing of the SOR is unknown. OECD Guidance Step 3C is the step where the downstream company conducts



its due diligence by investigating the SOR or assessing the SOR's due diligence to the extent practicable. The likely sources of information available to support Downstream Companies' due diligence of an SOR may include the following:

- Independent assessment or validation schemes (such as those offered by the CFSP, LBMA and the RJC).
- In-region sourcing programs (e.g., Solutions for Hope).
- Statements or other assertions of SORs.
- Indirect information (such as smelter location, metal association reports, independent reports, UN reports).

This due diligence of SORs as described above is used to support a company's determination whether there is evidence that the SOR is sourcing minerals that are considered conflict-free, may not be conflict-free, or are conflict undeterminable. By associating the SORs in a company's supply chain with products or product categories, a company may determine the conflict status of the product or product category. The company may also use information derived from these sources to populate its Form SD or Conflict Minerals Report (CMR) if required by the SEC Final Rule.

By implementing a company management plan as described in 3B and 3C, a company may encourage its direct suppliers to transition sourcing away from unvalidated SORs and to encourage SORs to become validated.

If a SOR is removed from the CFS list based on the results of a CFS audit the issuer should evaluate the product status utilizing the "DCR conflict free" definitions provided in the OECD letter to the SEC. If a company has ***"taken reasonable steps and made good faith efforts in accordance with the OECD and UN GoE due diligence recommendations to conduct due diligence on the minerals in that product; and (ii) know and can show that they have identified, assessed and responded to risks in accordance with the risk management strategies recommended by the OECD and UN GoE due diligence recommendations"*** then the material that has been incorporated into a product would be deemed as conflict free provided the company has implemented the appropriate risk mitigation, according to the OECD's definition.

Step 4: Audit Smelters or Refiners

The objective of this section is to interpret the downstream company responsibilities contemplated in OECD Step 4, explain how the outcome of the CFSP relates to Step 4 and summarize how Downstream Companies can use the outcomes from the CFSP to support SEC reporting obligations. These efforts follow once a company has a strong management system, assessed supply chain risks, and implemented a strategy to respond to those risks, as described in Steps 1, 2 and 3.



A. OECD Guidance Step 4: Independent third-party audit of SOR's due diligence practices

This OECD step defines the audit scope, principles, activities and criteria to assess an SOR's due diligence practices. It does not require or define audits for Downstream Companies.

1. Outcome of OECD Step 4

The third-party audit of a SOR assesses the activities, processes and systems used by the facility to conduct upstream supply chain due diligence of minerals for conflict-affected and high-risk areas. This includes, but is not limited to, SOR controls over the mineral supply chain, chain of custody and other mineral information, and SOR risk assessments, including on-the-ground research and SOR strategies for risk management. Conclusions include a determination based on evidence whether the SOR due diligence is in conformance with the OECD Guidance.

2. Outcome of the CFSP

The CFSP and recognized London Bullion Market Association Responsible Gold Guidance or Responsible Jewellery Council's Chain-of-Custody programs facilitates independent third-party audits of SORs and validates the SOR has met the requirements of the OECD Guidance and provides additional useful information. The CFSP (1) provides a determination whether the SOR has sourced minerals that are DRC conflict-free, and (2) publishes a list of SORs determined to be compliant with the audit (by the terms of the audit, "conflict-free"), and a list of the locations of those SORs.

3. OECD defined role for Downstream Companies

The OECD Guidance for Downstream Companies prescribes that Downstream Companies fulfill their responsibilities by collaborating through industry organizations or other suitable means. Downstream Companies are to appoint auditors and define the terms of the audit in line with the standards and processes set out in the Guidance. Small and medium enterprises are encouraged to join or build partnerships with such industry organizations.

As part of this collaboration, Downstream Companies are expected to participate in and contribute to an assessment scheme that facilitates third-party audits of SORs. The OECD Guidance has referenced the following schemes as industry examples of how Step 4 is being operationalized: the London Bullion Market Association, the Responsible Jewellery Council and the Conflict-Free Smelter Program of the CFSI.²⁵

²⁵ While the language of the OECD Guidance characterizes these schemes as certification schemes, the Conflict-Free Smelter Program of the CFSI is not a certification scheme because it is not an official certifying body. Rather, is a joint effort of companies



Some possible examples of how a downstream company might fulfill its obligation of supporting an assessment scheme include:

- Financial contribution to an organization that audits 3TG SORs or to a fund that is used to support audits of 3TG SORs.
- Membership in the organization implementing the assessment scheme (such as CFSI, LBMA, or RJC).
- Membership in a participating industry association that contributes and engages in such activities as SOR outreach.

The use of industry associations to carry out independent assessment schemes helps to address challenges Downstream Companies lacking business relationships with SORs would face to independently assess SOR due diligence practices.

4. OECD Step 4 and CFSP relationship to SEC requirements

As noted, the results of an independent audit of an SOR conducted pursuant to an industry-wide program in conformance with the OECD Guidance can support a downstream company's SEC compliance obligations. These independent audits may be facilitated by initiatives including those of the London Bullion Market Association, the Responsible Jewellery Council and the CFSI's Conflict-Free Smelter Program).

Through the means of those audits, companies may determine the following types of information that may be useful for SEC reporting requirements:

- Country of origin information may be available for SORs that have completed successful audits of the types listed above.
- DRC conflict-free status information may be available for SORs that have successfully completed audits.

For example, if an issuer can associate all of the SORs used in a supply chain of one of its product categories as being CFSP, then it could conclude in the SEC CMR that this product category is DRC conflict-free. These audits satisfy the SEC requirement for the "source and chain of custody" of minerals sourced from the DRC or adjoining countries.

to devise a best practices standard and hold SORs accountable to that standard by means of an audit to verify whether they meet the standard. RJC is a certification scheme.



Step 5: Report Findings

This section outlines the approaches a company may take to meet its reporting obligation under the SEC Final Rule. Step 5 of the OECD Guidance has a different stated objective for public reporting than that of the SEC rule.

The OECD Guidance Step 5 recommends that companies publicly report on their due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas in order to generate public confidence in measures taken. The SEC rule requires public disclosure to bring greater public awareness of the source of companies' conflict minerals in their products. These differing public reporting objectives drive different requirements for OECD and SEC conflict minerals reports. The following section discusses common practices for meeting both requirements, with the focus on addressing the more specific and detailed reporting requirements contained in the SEC Final Rule.

A. OECD Guidance Step 5: Report annually on supply chain due diligence

1. OECD Guidance: public reporting

The OECD Guidance Step 5 recommends that companies report annually on their supply chain due diligence for minerals from conflict-affected and high-risk areas, not necessarily restricted to the DRC or its adjoining countries. At this time, this is not a requirement of the SEC Final Rule. The Guidance also states that reports by Downstream Companies should specifically include information on each company's:

- management systems, such as the company's supply chain due diligence policy and an explanation of the management structure responsible for the company's due diligence;
- risk assessment and management of the process to identify SORs in the supply chain and assess their due diligence processes through industry validation schemes conforming to the OECD Guidance; and
- participation in or facilitation of audits of SORs' due diligence practices, taking into account business confidentiality and other competitiveness concerns.

2. SEC rule: public reporting

Unlike the OECD Guidance Step 5, the SEC Final Rule requires companies to report annually on the reasonable country of origin (RCOI) inquiry conducted for all necessary conflict minerals and regardless of their country of origin. When a company has reason to believe that the 3TG minerals in their supply chain may have originated in the DRC or adjoining countries, companies must report publicly on their due diligence to determine the source and chain of

custody of the 3TG minerals. The SEC Final Rule requires publication of CMR audit result if a CMR is required.

i. SEC Form SD: body of the report



The SEC Final Rule requires filing Form SD if any product manufactured by a issuer or contractor for manufacture by a issuer contains conflict minerals necessary to the functionality or production of the product, as those terms are defined in the rule. The contents of Form SD vary depending on the circumstances surrounding the conflict minerals. If the company has no reason to believe that conflict minerals originated in a CC or determines that they originated from scrap or recycled material, the company's Form SD need only contain a brief description of the RCOI performed and the results of the RCOI.

If the company has reason to believe that necessary conflict minerals originated in a CC, it must conduct due diligence on the source and origin of the minerals and prepare a CMR (an exhibit to Form SD) containing a description of the due diligence process, a description of products not found to be DRC conflict-free, and the results of an independent private sector audit (IPSA) of the CMR, with audit objectives as set out in the Final Rule.²⁶

The requirement for filing a CMR and obtaining an IPSA are relaxed for all issuers when products that contain conflict minerals are of indeterminate origin for a two-year period. Form SD does not specify any particular format for reporting the required information, and the rule allows issuers the flexibility to describe their products specifically or in broad categories in Form SD, based on the issuer's individual facts and circumstances.

3. OECD Step 5 relationship to SEC requirements

The reporting recommended for Downstream Companies by the OECD Guidance is compatible with that required by the SEC Final Rule, with the exception that the requirements for an IPSA in the SEC Final Rule are more specific and more detailed than the recommendations for publication of audits set out in the OECD Guidance.

As a result, the two regimes may be accommodated most efficiently by making one public report on Form SD in accordance with the Final Rule. Where a company has participated in or facilitated audits of SORs, the company may choose to include that information as part of the Form SD or elsewhere. Where an IPSA is not required by the Final Rule by virtue of the two-year grace period, companies may choose to use the additional time to prepare for an audit.

²⁶ No independent private sector audit is required for (i) products that are found to be conflict undeterminable, (ii) where a nationally or internationally recognized due diligence framework does not exist for a necessary conflict mineral, or (iii) where as a result of the due diligence the company determines that its conflict minerals did not originate in the DRC or an adjoining country (or it determines as a result of that due diligence that its necessary conflict minerals did come from recycled or scrap sources). See full text of SEC Final Rule for more details: <http://www.sec.gov/rules/final/2012/34-67716.pdf>

When obtaining an audit of its CMR, companies may choose to employ the practices outlined below.

4. Conflict Minerals Report audit



The SEC Final Rule requires that SEC reporting companies obtain IPSAs, in the circumstances discussed above, and that audits conducted in conformance with the Final Rule satisfy the OECD recommendation. As of the date of this paper's publication the SEC Final Rule remains under litigation. That litigation has drawn open the question as to whether it is constitutional to require companies to classify their products as "Not Found to be DRC Conflict Free." Different interpretations exist as to what labels, if any, a company is required to apply to its products. If a company holds the legal opinion that it is not required to label its products in the explicit terms in the Final Rule, the audit requirement is also subject to interpretation. Therefore, not all of the practices identified below may apply to your company.

Companies may consider the practices set out below in selecting auditors and managing audits of their due diligence practices and reporting:

- Determine whether or not an audit is required by legislation or otherwise desired by the company.
- Identify the scope and form of the audit. Companies should affirmatively assert the scope and form of audit in line with their objectives.
- Select and engage audit firms while taking into account independence requirements.
- Assign a "responsible person" to oversee the audit engagement, agree on criteria to be used and provide any written representations that may be necessary.
- Rely on industry-wide processes for auditing SORs and upstream due diligence activities, where possible, and limit the company's audit scope to the scope contemplated by the SEC rule and any additional guidance on scope from the SEC regarding downstream due diligence processes.

Conclusions

This document provides practical guidance in implementing a downstream company's conflict minerals program. It is based on reasonable approaches, many of which stem from lessons learned through pilot programs or similar experiences from other compliance programs across several industries. Both the OECD Guidance and SEC Final Rule allow for flexibility in how an organization may choose to implement its program. As this is a new type of requirement for companies, it is important that this flexibility remains, so as not to limit innovative solutions and improvements in systems and approaches over time.