



**Schulte Roth&Zabel**




An initiative of the EICC and GeSI

# **Conflict Minerals Reporting**

**A Review of Calendar Year 2013 Filings  
and Recommendations for Calendar  
Year 2014 Compliance**

**A White Paper Produced by Schulte Roth & Zabel and  
the Conflict-Free Sourcing Initiative**

**September 2014**



*On June 2, 2014, the first filings under the Conflict Minerals Rule — which related to calendar year 2013 — were due. In this White Paper, we discuss the calendar year 2013 filings across a range of metrics and provide other observations on the filings. We also discuss take-aways from the calendar year 2013 filings for both public and private companies.*

# Filing Statistics

## Who Filed ... and Who Didn't

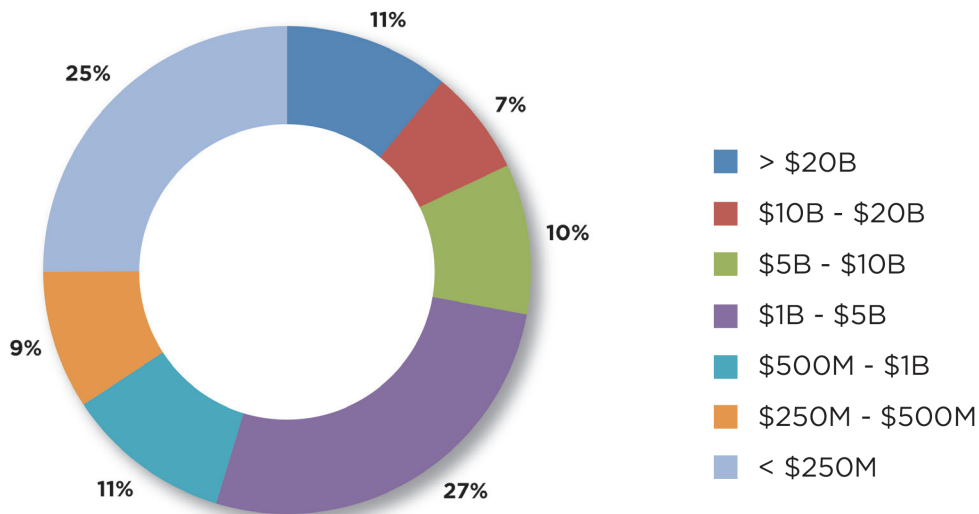
Perhaps the biggest surprise to come out of the calendar year 2013 filings was the relatively small number of filers.

- A total of 1,315 Form SDs were filed.
- Since some filings were made by parent and subsidiary registrants that filed joint reports, the number of unique filings was slightly lower.

In its required economic analysis, the Securities and Exchange Commission ("SEC") estimated that approximately 6,000 issuers would have filing obligations under the Conflict Minerals Rule. This estimate was based on the number of issuers that fall under the Standard Industrial Classification ("SIC") codes that the SEC believed were most likely to result in filing obligations. Although these numbers were rough estimates, the actual number of Form SD filings was only 22 percent of the SEC's estimate.

## Filings by Market Capitalization and Annual Revenue

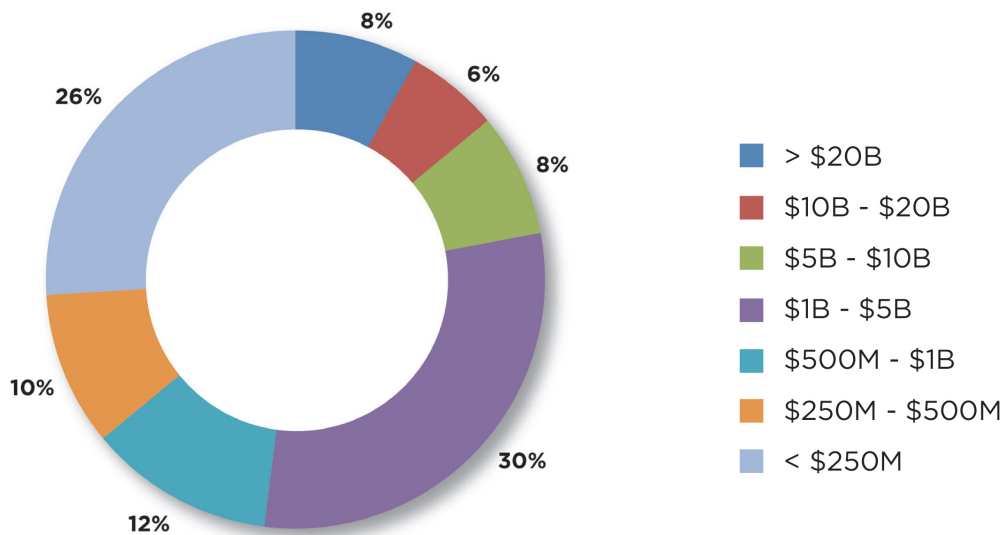
Breaking the filings down by market capitalization, more than half (55 percent) of Form SD filers had a market capitalization exceeding \$1 billion and over a quarter (28 percent) had a market capitalization exceeding \$5 billion. Eleven percent had market capitalizations exceeding \$20 billion.



**Market Capitalization — Form SD Filers**

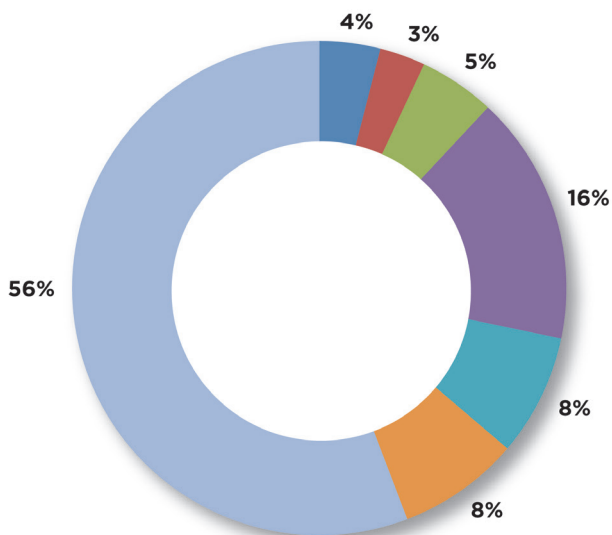
Eleven percent of the filers with a market capitalization of less than \$250 million were debt-only filers that do not have publicly-traded equity. Most of these issuers are what would generally be considered mid-size companies.

Since market capitalization is not always indicative of an issuer's size, we also broke the filings down by annual revenue. The results were similar. Fifty-two percent of the Form SD filers had annual revenue exceeding \$1 billion, while 22 percent had annual revenue in excess of \$5 billion and 8 percent had annual revenue of more than \$20 billion.

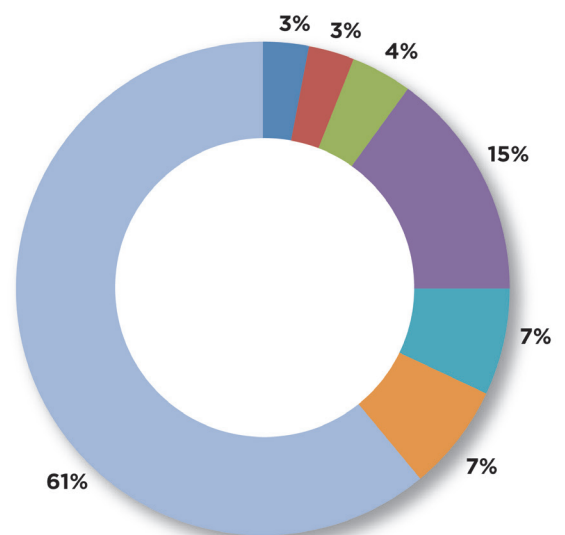


**Annual Revenue — Form SD Filers**

In comparison, the following two charts show the total Exchange Act filer population — which consists of approximately 15,000 issuers — by market capitalization and annual revenue.



**Market Capitalization — All Registrants**



**Annual Revenue — All Registrants**

As indicated by the data in the charts above, the percentage of Exchange Act registrants with a market capitalization or annual revenue under \$250 million that filed a Form SD was significantly less than the percentage of the total number of Exchange Act registrants in that band under either metric. Even after accounting for public shells and taking into account that many smaller public companies are biotech, natural resources or other development-stage companies with no in-scope products and that smaller public companies are less likely to be engaged in manufacturing, the percentage of smaller companies that filed a Form SD has struck many commentators as low.

Possible explanations include the following:

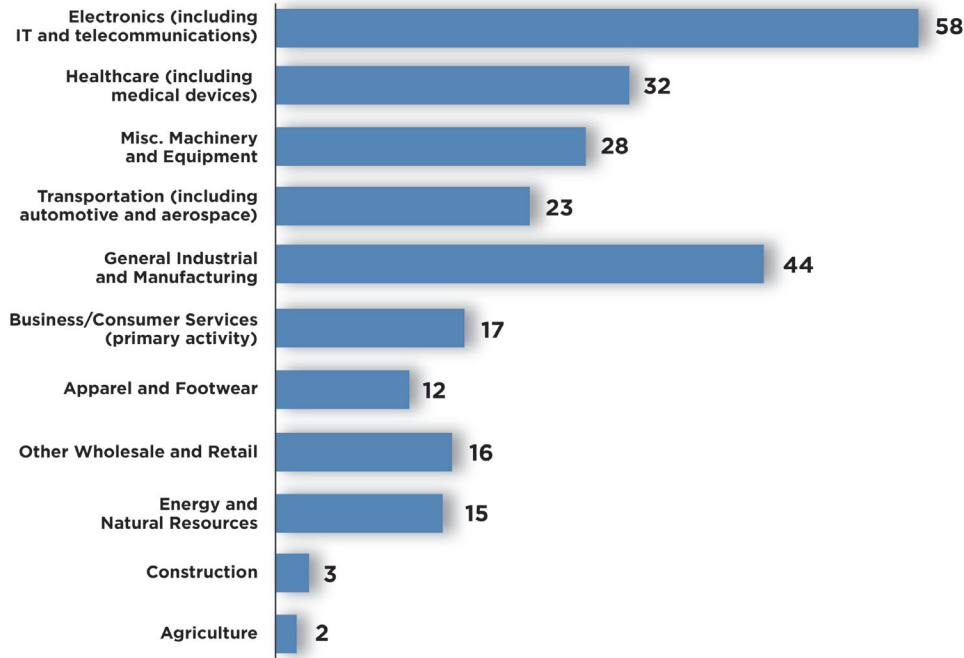
- We suspect that, in some cases, smaller issuers were more aggressive in their scoping determinations than larger, higher-profile issuers. Although the SEC’s Adopting Release and subsequent FAQs provide some guidance to help issuers determine which of their products are in-scope for purposes of the Conflict Minerals Rule, whether an issuer has “contracted to manufacture” a product or conflict minerals are “necessary to the functionality or production” of a product is dependent on the facts and circumstances and involves judgment calls.
- In other cases, the determination that a filing was not required may have been due to a less in-depth understanding of the requirements of the Conflict Minerals Rule.

Some commentators have speculated that a significant number of issuers willfully ignored their filing obligations. Across the large number of issuers that we have worked with or otherwise interacted with in this area, we are not aware of a single instance where an issuer made a deliberate decision to ignore its filing obligations under the Conflict Minerals Rule. Accordingly, we believe that instances of deliberate non-compliance were rare, if they occurred at all.

Although not separately broken out in this *White Paper*, we have also seen a significant difference in the filings made by mid-size and larger issuers (whether measured by market capitalization or annual revenue) as compared to smaller issuers. There were of course many thoughtful, comprehensive filings by smaller issuers. However, on balance, their filings tended to be shorter and contained less detail on both their compliance efforts and program. Accordingly, we have in most cases below limited the data presented to a sample of 250 filers with a market capitalization in excess of \$250 million (the “Sample Group”).

### Filings by Industry Category

The Sample Group filings were from a broad range of industry categories as follows:

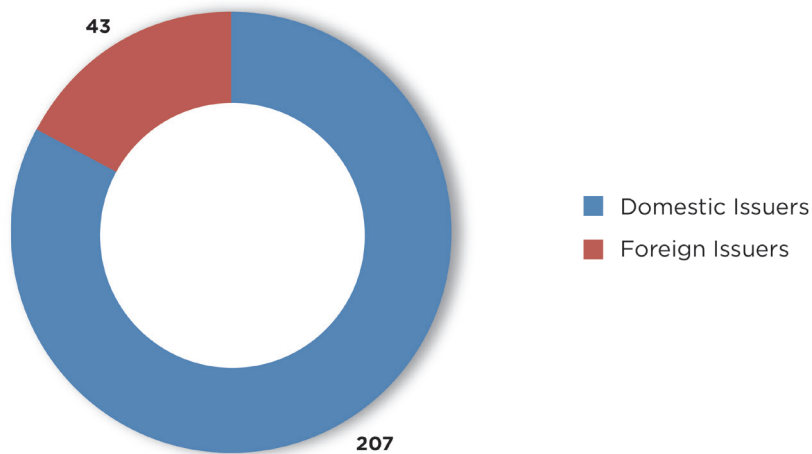


**Filings by Industry Category – Sample Group**

The categories in this chart were based on a combination of reported SIC codes and business and product descriptions in Form 10-Ks and on corporate websites. The industries represented and relative weighting are not surprising. Since many filers operate across multiple business lines and have products of broad application, many of the Sample Group issuers could have been included under two or more industry categories. However, this chart illustrates that issuers across a wide range of industries made filings under the Conflict Minerals Rule. Out of the total issuer population, companies from 269 individual SIC codes filed.

## Domestic vs. Foreign Filers

Within the Sample Group, filings between domestic and foreign issuers broke out as follows:



### Breakdown Between Domestic and Foreign Filers – Sample Group

Seventeen percent of the Sample Group were foreign issuers. In comparison, approximately 8 percent of all Exchange Act filers are foreign issuers. We attribute this percentage difference to the significant number of large dual-listed foreign manufacturers relative to the broader foreign issuer population.

## Audits

As expected, there were few audits for calendar year 2013. Under the Conflict Minerals Rule and as clarified in a subsequent SEC FAQ, an independent private sector audit (“IPSA”) is not required during a temporary transition period if, after exercising due diligence over the source and chain of custody of its conflict minerals, the issuer determined that at least one of its products may be described as “DRC conflict undeterminable.” This transition period runs through calendar year 2016 for smaller reporting companies and calendar year 2014 for all other issuers. Subsequently, in its April 29, 2014 Statement on the effect of the April 14, 2014 D.C. Circuit Court of Appeals’ decision on the Conflict Minerals Rule, the SEC further scaled back the IPSA requirement, indicating that, pending further action, an IPSA will not be required unless an issuer voluntarily elects to describe a product as “DRC conflict free” in its Conflict Minerals Report (“CMR”).

Given the current voluntary nature of the IPSA, there were only four IPSAs for calendar year 2013. The issuers and auditors are indicated below.

Issuer	Auditor
Intel Corp.	Ernst & Young LLP
Kemet Corp.	Douglas Hileman Consulting LLC
Koninklijke Philips NV	KPMG Accountants N.V.
Signet Jewelers Ltd.	SGS United Kingdom Ltd.

Under the Conflict Minerals Rule, an IPSA must be performed in accordance with Generally Accepted Government Auditing Standards, also known as the Yellow Book, established by the Government Accountability Office. The IPSA can take the form of either an attestation engagement or a performance audit. Only CPA firms can perform attestation engagements. Non-CPAs also can perform performance audits.

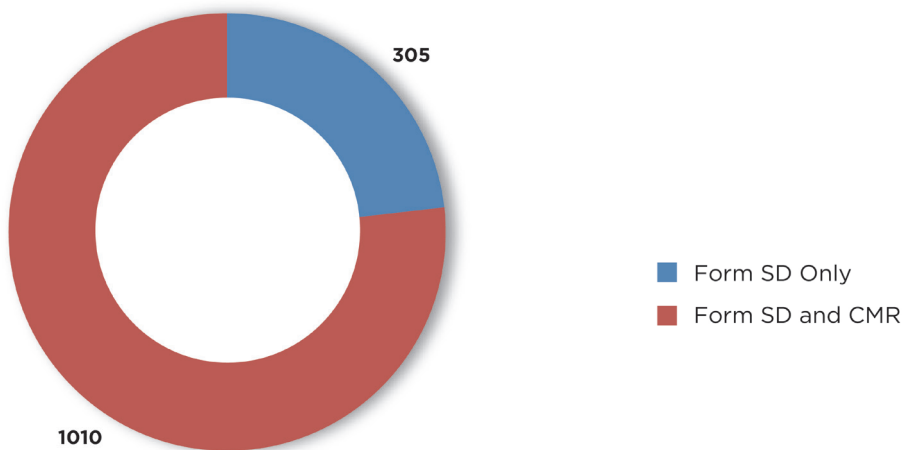
Other observations from the calendar year 2013 audits include the following:

- Market practice was split down the middle, with two attestation engagements by CPA firms and two performance audits by non-CPAs.
- Larger issuers were not automatically drawn to attestation engagements.
- Both of the issuers that had attestation engagements performed used their financial statement auditor to conduct the audit. The IPSA is treated as a non-audit service and is therefore subject to the audit committee pre-approval requirements for non-audit services. However, this did not appear to be an impediment to issuers that decided to opt for attestation engagements.

We expect that there also will be relatively few audits for calendar year 2014, since most issuers are not likely to voluntarily undertake an audit. However, some issuers, especially larger issuers with well-known consumer brands, may receive pressure from non-governmental organizations (“NGOs”) to conduct an audit for this year. In any case, expect market practice around audits to continue to evolve as more IPSAs are conducted.

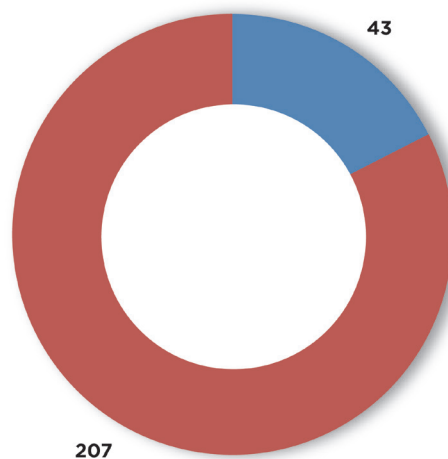
### What Was Filed?

Most issuers filed both a Form SD and a CMR. CMRs were filed with 77 percent of the Form SDs filed. In its economic analysis, the SEC estimated that approximately 75 percent of Form SD filers also would be required to file a CMR.



**Filing Components — All Filers**

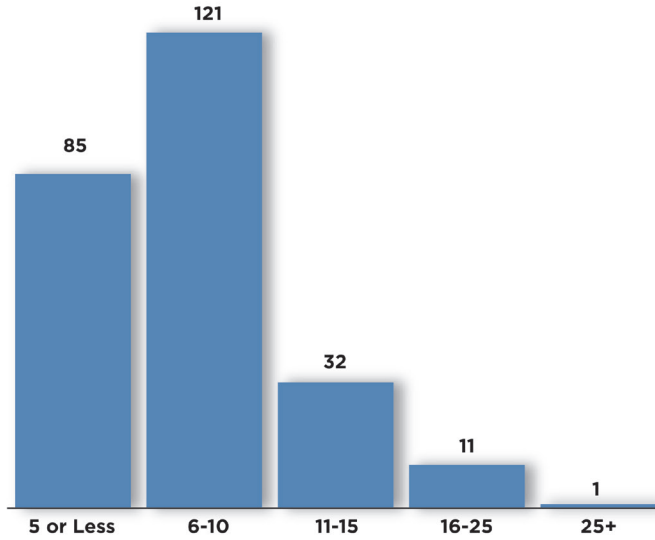
In line with both the total filer population and the SEC’s estimates, 82 percent of the Sample Group filed both a Form SD and a CMR.



**Filing Components — Sample Group**

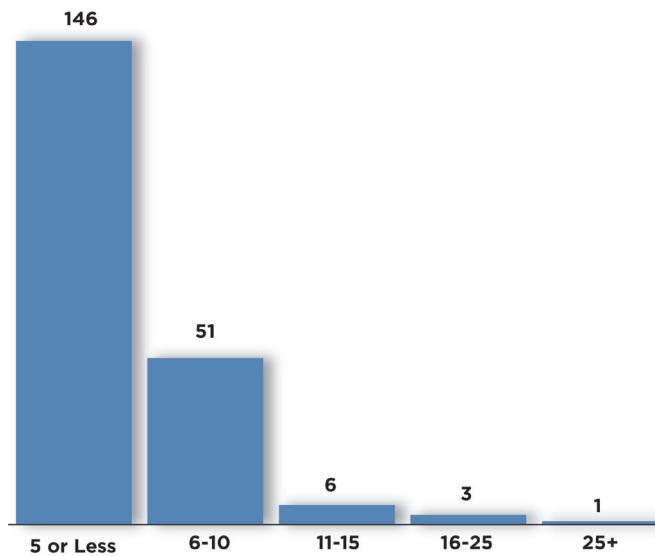
## Filing Length

As expected, the length of filings ran the gamut, with filings ranging from very brief, with less than one full page of substance, to lengthy. Slightly less than half (48 percent) of the Sample Group filings — Form SD and CMR combined — were in the six- to 10-page range. Most of the filings that totaled five pages or less did not include a CMR.



**Total Filing Page Length (Form SD and CMR) — Sample Group**

As noted in the “Filing Components” charts on the previous page, most of the Sample Group issuers, and filers generally, filed a CMR as an exhibit to their Form SD. The Sample Group’s CMRs averaged approximately five pages, and most of those that were in the “five or less pages” category in the chart below were four to five pages long. The following chart contains additional information on Sample Group CMR page length.



**CMR Page Length — Sample Group**



As discussed in more detail later in this *White Paper*, there was significant variation in both the content and layout of the CMRs filed by issuers. However, general observations on the content and layout of the CMRs include the following:

- Longer CMRs often included smelter and refiner information.
- Longer CMRs generally contained more background on the applicability of the Conflict Minerals Rule to the issuer and a more methodical discussion of the application of the Organisation for Economic Co-operation and Development's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (the "OECD Guidance").
- In addition, longer CMRs often contained bullets or sub-paragraphs, which resulted in more white space on each page.
- In a few instances, issuers included charts or other graphics in their filings, including of their mineral supply chain and/or smelter and refiner data. However, this was rare.

### Discussion of Due Diligence Framework Generally

Most of the issuers in the Sample Group expressly indicated that they used the OECD Guidance for their due diligence. This was expected, since the Conflict Minerals Rule requires that an issuer's due diligence conform to a nationally or internationally recognized due diligence framework for conflict minerals to the extent available, and the OECD Guidance is the only framework that satisfies this requirement.

Sixty-one percent of the Sample Group subset that filed a CMR tracked the OECD Guidance's five-step framework in the CMR, either by organizing the discussion under section headings that were consistent with those used in the OECD Guidance for each of the framework steps or by generally following the order of the five-step framework. (Where indicated, percentages are stated as a percentage of the Sample Group subset that filed a CMR, rather than of the entire Sample Group population, if the statistic related primarily to CMR disclosure.)

The five steps of the framework in the OECD Guidance are:

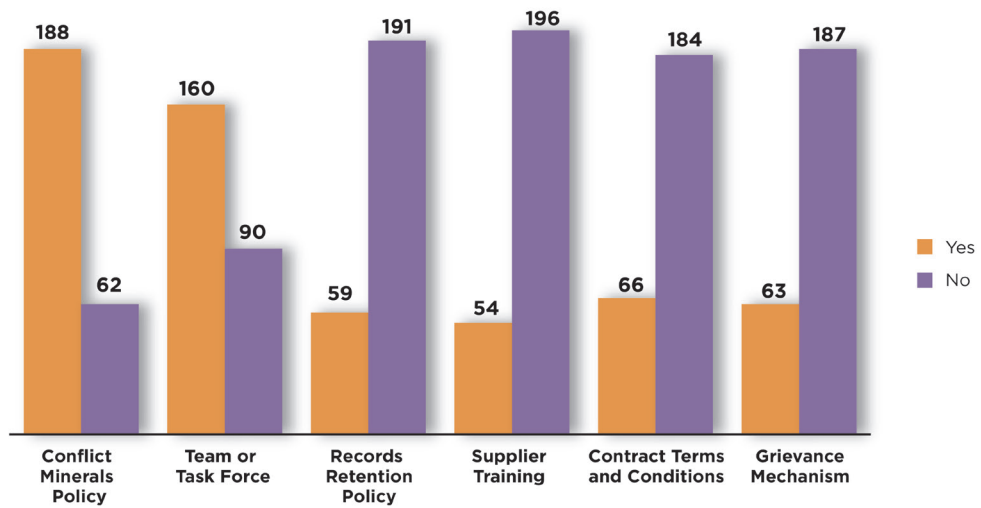
- Establish strong company management systems;
- Identify and assess risk in the supply chain;
- Design and implement a strategy to respond to identified risks;
- Carry out independent third-party audit of supply chain due diligence at identified points in the supply chain; and
- Report on supply chain due diligence.

Some of the individual elements of the OECD Guidance are discussed in the sections that follow.

*"Sixty-one percent of the Sample Group subset that filed a CMR tracked the OECD Guidance's five-step framework in the CMR."*

## Management Systems

With respect to Step 1 of the OECD Guidance, the establishment of strong company management systems, the Sample Group discussed the following Step 1 program elements as indicated in the chart below.



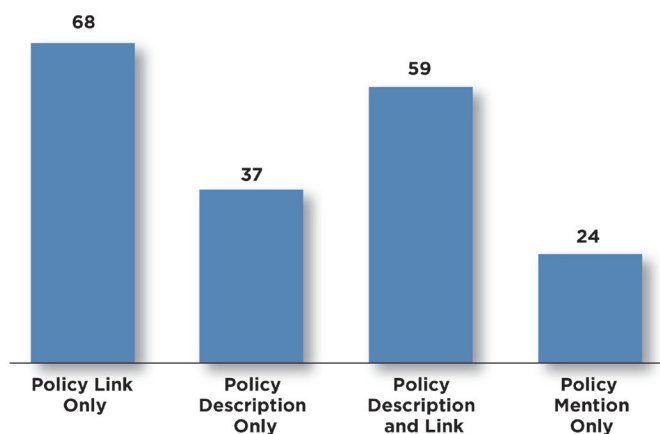
**Management Systems Elements Discussed — Sample Group**

### *Conflict Minerals Policy*

The most frequently cited Step 1 program element was the conflict minerals policy, which was cited by 75 percent of the Sample Group. Placement of the discussion of the policy varied. Some issuers discussed the policy in the base Form SD, and others included the policy discussion in the CMR, while some discussed the policy in both locations.

Issuers in the Sample Group that indicated that they had a policy took different approaches in discussing the policy:

- Thirty-six percent provided a link to the policy but did not describe the policy in the filing.
- Twenty percent described the policy but did not provide a link.
- Thirty-one percent both described and provided a link to the policy.
- The remaining 13 percent of this Sample Group subset indicated that they had a policy but did not describe the policy or provide a link to the policy.



**Conflict Minerals Policy Discussion — Sample Group**

Some of the issuers that discussed the substance of the policy reproduced the policy verbatim, while other issuers instead provided a summary of the material elements of the policy.

Many of the 62 issuers that did not indicate that they already had a policy in place indicated that they intend to adopt a conflict minerals policy during 2014. We expect that most issuers will have adopted a policy by the end of 2014 and will therefore reference a policy in their calendar year 2014 filings.

#### *Conflict Minerals Working Group*

The next most frequently cited Step 1 program element was the designation of a conflict minerals team or working group. This program element was cited by 64 percent of the Sample Group, mostly in the CMR.

Here, Sample Group issuers also took different approaches:

- Some issuers only indicated that they had designated a team for compliance.
- Some issuers went further, indicating the principal departments or job functions involved with the compliance effort.
- Some issuers also indicated the title of the individual with oversight of conflict minerals compliance.
- A small number of issuers indicated the number of employees involved with their compliance efforts.

Some issuers in the Sample Group also indicated that they were assisted by outside professional advisers or information technology (“IT”) firms, although this was in most cases discussed generically, without listing the firms by name.

#### *Other OECD Guidance Step 1 Elements*

The other OECD Guidance Step 1 elements included in the “Management Systems Elements Discussed — Sample Group” chart on page 8 were discussed by substantially fewer issuers. This was expected, since many issuers are still in the process of building out their compliance program. If only those Sample Group issuers that filed a CMR are included, the percentage of the population discussing these program elements increases substantially. As a result of the continuing development of compliance programs this year, as well as enhancements to filings based on calendar year 2013 filings by competitors and peers, we expect references to at least some of these other program elements to increase in the next filing.

“Seventy percent of the Sample Group indicated that they used the EICC/GeSI’s Conflict-Free Sourcing Initiative Conflict Minerals Reporting Template to survey their suppliers.”

## Survey Process

### Survey Format

Seventy percent of the Sample Group indicated that they used the EICC/GeSI’s Conflict-Free Sourcing Initiative (“CFSI”) Conflict Minerals Reporting Template to survey their suppliers. The remaining 30 percent of the Sample Group indicated that they used a custom survey template or a template based on the CFSI Template, or did not indicate the survey mechanism used.

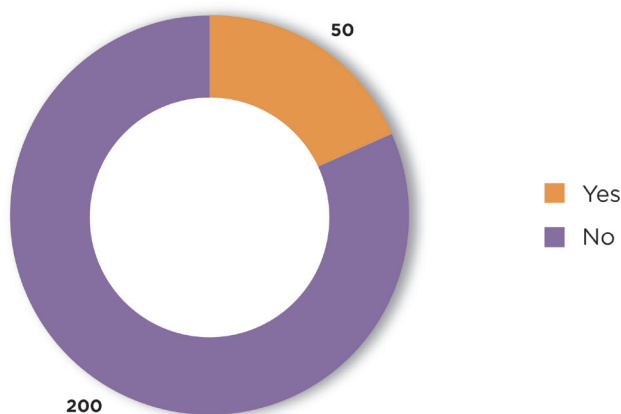
In our experience, most issuers in the electronics industry used the Template, given that industry’s leadership in its development. A high percentage of companies engaged in manufacturing also used the Template. In contrast, many retailers used a modified questionnaire, in many cases paper-based, out of concern that their supply chain generally did not have the sophistication or was less likely to complete the Template. In contrast to many companies in the electronics industry, some retailers had a fairly small number of in-scope products and/or suppliers, so they were able to effectively manage paper-based and alternative questionnaire formats.

We expect usage of the Template to further increase this year, including among retailers. We believe that most suppliers are now familiar with the Template and how to complete it, as it is the de facto standard. In addition, usage of the Template may increase the supplier response rate, since most suppliers also will need to complete the Template for other customers.

The release in April 2014 of IPC-1755 also is likely to further increase usage of the Template. IPC-1755 is a data exchange standard that was developed by IPC — Association Connecting Electronics Industries in partnership with several other industry groups, including CFSI. IPC-1755 is XML-schema based, which allows for more efficient communication and quicker application of data across companies, supply chain levels and industries. IPC-1755 is compatible with the new Revision 3.01 of the Template.

### Supplemental Materials

A small percentage (20 percent) of the Sample Group indicated in their filings, primarily in the CMR, that they furnished supplemental explanatory materials to suppliers with or in advance of commencing the survey process. These materials pertained to the survey process and the completion of the survey, the Conflict Minerals Rule generally and/or the issuer’s compliance expectations.

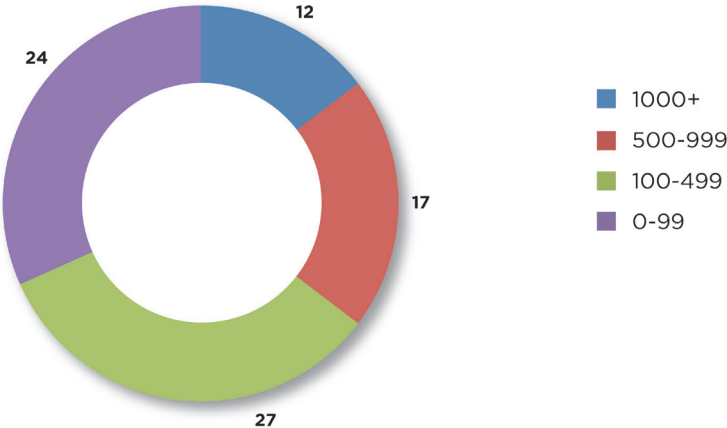


**Supplemental Explanatory Materials Furnished to Suppliers — Sample Group**

We believe that the use of supplemental materials was somewhat more widespread than indicated in the filings. However, as discussed in our recommendations later in this *White Paper*, many issuers can still benefit from enhancing the materials that they provide to their suppliers.

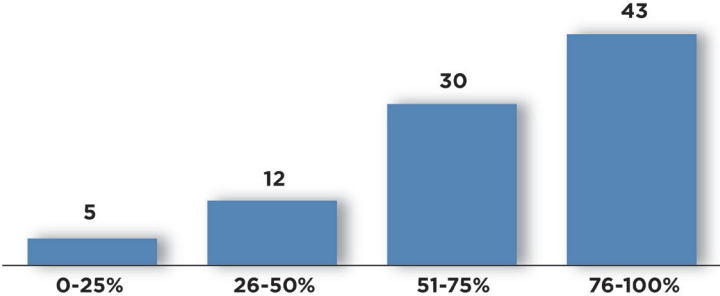
*Suppliers Surveyed and Response Rates*

Slightly under one-third (32 percent) of the Sample Group indicated the number of suppliers surveyed. As expected, the number of surveyed suppliers varied significantly.



**Number of Suppliers Surveyed — Sample Group**

A slightly higher percentage of the Sample Group (36 percent) indicated their supplier response rate. In most cases, issuers that indicated the number of suppliers surveyed also indicated their response rate. Not surprisingly, issuers with higher response rates were more inclined to provide response rate disclosure. Almost half of the issuers providing response rates indicated a response rate of more than 75 percent, while another third indicated a response rate between 50 and 75 percent.



**Supplier Response Rate — Sample Group**

However, with few exceptions, Sample Group issuers did not describe what constituted a response. In other words, the disclosure did not indicate whether the response percentage included responses that contained inaccuracies or inconsistencies, that were incomplete or that were non-conforming (such as in a letter format). Based on the difficulty issuers experienced in obtaining complete, error-free responses, high response rates within the Sample Group are likely to reflect all responses received, without regard to quality.

*“Sixty-two percent of the Sample Group issuers that filed a CMR indicated that they have devised a risk management strategy or implemented a risk management plan, or they discussed other elements of Step 3 of the OECD Guidance.”*

#### *Supplier Follow-Up and Review of Responses*

Fifty-six percent of the Sample Group indicated that they followed up with suppliers that did not submit a response or that submitted a response that was believed to be inaccurate or incomplete. Although some of the Sample Group issuers that only filed a Form SD described their supplier follow-up, in most cases, the discussion was included in a CMR. Accordingly, as a percentage of Sample Group CMR filers, the percentage of issuers that discussed their supplier follow-up was somewhat higher. Many Sample Group issuers indicated the form of follow-up (typically email, phone or mail) and some indicated their escalation process for non-responsive suppliers.

A much smaller percentage of the Sample Group discussed their process for reviewing smelter and refiner information provided by suppliers:

- Less than 15 percent of the Sample Group indicated that they reviewed smelter and refiner information received from suppliers against published third-party lists of certified smelters and refiners.
- An even smaller percentage of the Sample Group indicated that they performed additional reviews on identified smelters and refiners that were not certified.

These percentages were low in part because a significant number of the Sample Group issuers that filed CMRs indicated that they were unable to obtain any smelter or refiner information from their suppliers.

In their initial comments on the calendar year 2013 filings, NGOs and institutional socially responsible investors (“SRIs”) were especially critical of the level of disclosure relating to the review of supplier information, noting that they generally did not find the disclosure sufficient to demonstrate that companies performed a credible reasonable country of origin inquiry (“RCOI”) or due diligence.

#### *RCOI Discussion*

The majority of the issuers in the Sample Group that filed a CMR included the substance of their RCOI within their discussion of the OECD Guidance. The SEC has indicated that the RCOI required by the Conflict Minerals Rule is consistent with the supplier engagement approach under the OECD Guidance. Since most issuers utilized the OECD Guidance for both their RCOI and due diligence, the discussion often was combined.

#### **Risk Mitigation and Process Improvements**

Sixty-two percent of the Sample Group issuers that filed a CMR indicated that they have devised a risk management strategy or implemented a risk management plan, or they discussed other elements of Step 3 of the OECD Guidance. This percentage is roughly the same as the percentage that tracked the OECD Guidance’s five-step framework in their CMRs, although the two Sample Group subsets were not identical.

A slightly higher percentage of the Sample Group (68 percent) discussed or listed in their CMRs future steps to mitigate the risk that their necessary conflict minerals benefit armed groups, including steps to improve due diligence, although the steps listed varied among issuers.

Some of the areas of future improvement cited included:

- Continuing to implement various elements of the OECD Guidance;
- Enhancing supplier training;
- Engaging with suppliers that provided incomplete information for calendar year 2013 or that did not respond to information requests;
- Encouraging suppliers to provide product level information;
- Monitoring and encouraging the continued development and progress of traceability measures at suppliers;
- Communicating the conflict minerals policy and sourcing expectations to new suppliers;
- Incorporating conflict minerals compliance into supplier audits;
- Retaining a third-party IT vendor to assist with supplier outreach and/or data analysis;
- Reaching out to smelters and refiners to encourage them to undergo audits; and
- Joining the CFSI and participating in other industry initiatives.

The items listed were in part a function of the OECD Guidance elements already in place or other work that already had been done, with issuers that were further along typically listing fewer areas for future improvement. Issuers also did not necessarily list all of their planned areas of improvement. Many issuers were conservative in describing prospective risk mitigation efforts and other areas of improvement in their compliance programs, not listing everything that they plan to do, since the ability to successfully implement at least some program elements is dependent on supplier cooperation.

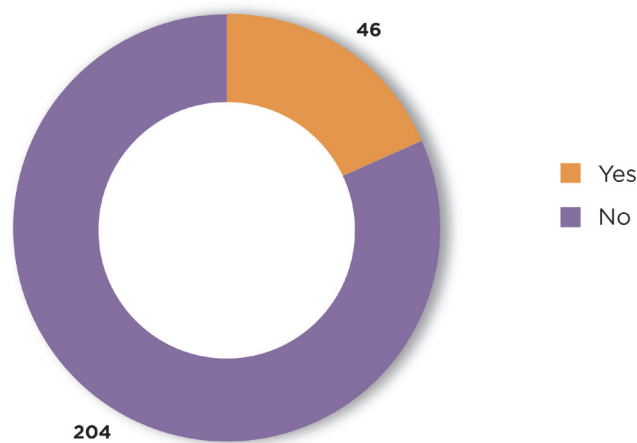
### CFSI Membership

Fourteen percent of the Sample Group indicated that they were members of the CFSI. Step 4 of the OECD Guidance contemplates independent third-party audits of supply chain due diligence at identified points in the supply chain. Issuers satisfy this element of the OECD Guidance through multi-stakeholder initiatives such as the CFSI, since it is not practical to do so on an individual basis. CFSI is of the view that companies should be CFSI members in order to rely on CFSI's programs to satisfy this element of the OECD Guidance and that usage of publicly available CFSI smelter and refiner information without CFSI membership does not satisfy Step 4 of the OECD Guidance.

*“Many issuers were conservative in describing prospective risk mitigation efforts and other areas of improvement in their compliance programs, not listing everything that they plan to do, since the ability to successfully implement at least some program elements is dependent on supplier cooperation.”*

## Smelter and Refiner Information

Most of the Sample Group did not include smelter or refiner information in their filings. Only 46, or 18 percent, of the Sample Group issuers provided smelter or refiner information.



### Discussion of Smelter or Refiner Information — Sample Group

All of the Sample Group issuers that provided smelter or refiner information did so in their CMRs; none of the Form SD-only filers provided smelter or refiner information. As a percentage of the Sample Group CMR filers, 22 percent provided smelter or refiner information. A significant number of the issuers that did not include smelter or refiner information indicated that they were not able to determine the smelters or refiners in their supply chains.

A large portion of the Sample Group issuers that included smelter or refiner information in their CMRs came from the electronics industry. This was not surprising, since issuers in that industry generally are further along in mapping their supply chains. The issuers in the Sample Group that included smelter or refiner information also skewed towards larger companies.

There was significant variation in how the Sample Group reported smelter and refiner information:

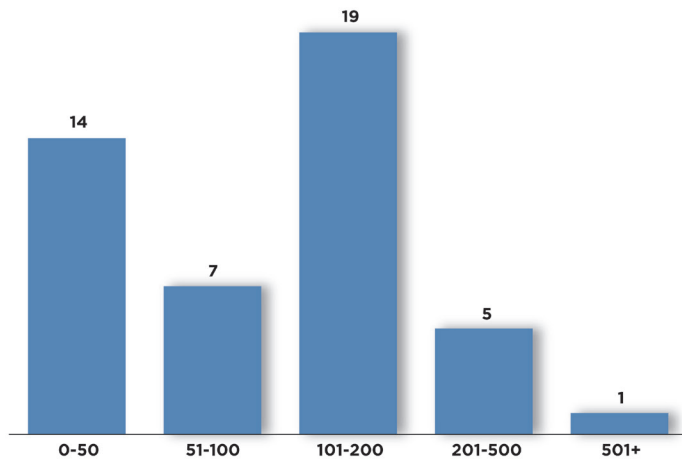
- Slightly more than half of the Sample Group subset (54 percent) appear to have listed all of the smelters and refiners identified to them by their suppliers, or at least all that were on the Standard Smelter Names tab of the Template.
- Five issuers only listed smelters and refiners that were certified as conflict-free.
- Three issuers only listed smelters and refiners that sourced from the Democratic Republic of the Congo (“DRC”) region.
- Thirteen issuers did not list individual smelters or refiners, but instead provided smelter and refiner information on an aggregated basis.

Issuers generally did not indicate whether the smelters and refiners reported were affirmatively determined to be part of the issuer’s supply chain, or were merely reported to the issuer by its suppliers.



### Number of Smelters and Refiners Disclosed

The number of smelters and refiners listed or indicated by the Sample Group subset that reported smelter or refiner information varied widely.



### Number of Smelters and Refiners Disclosed — Sample Group

#### Country of Origin Information

Approximately two-thirds (30) of the 46 Sample Group issuers that included smelter or refiner data also provided country of origin information. Sixteen of these issuers listed specific individual countries of origin, while the remainder primarily used the L1, L2 and L3 country groupings.

#### Certification Information

Many of the issuers that provided smelter or refiner information also indicated the certification status of the smelters and refiners. Some of these issuers also provided additional detail regarding the certification, including the date as of which the certification information was current, the entity that certified the smelter or refiner and whether the smelter or refiner was “active” and what that meant.

### Use of “Labels”; Product Descriptions

Eighty percent of the Sample Group that filed CMRs described products as “DRC conflict undeterminable” or used equivalent language, notwithstanding the SEC’s April 29, 2014 Statement, which indicated that issuers are not required to describe products as “DRC conflict undeterminable,” “DRC conflict free” or having “not been found to be DRC conflict free.”

A small number of issuers outside the Sample Group misapplied the Conflict Minerals Rule, describing products as “DRC conflict free” in their CMRs but not obtaining an IPSA. In both its April 29, 2014 Statement and an earlier FAQ, the SEC indicated that, if an issuer describes a product as “DRC conflict free” in its CMR, an IPSA is required.

Issuers generally provided high-level descriptions of their in-scope product categories, often based on their Form 10-K disclosure. In some cases, issuers instead indicated that all of their products were in-scope, without including a description of their products.

## Filing Signatory and Designated Contact Person

The Form SD is required to be signed by an “executive officer,” as that term is defined in Rule 3b-7 under the Exchange Act. The issuer also is required to indicate a contact person on the cover page of the Form SD.

We did not review these items across the entire Sample Group, since decisions relating to these items were, and are expected to continue to be, largely determined by the specific managerial responsibilities of relevant issuer personnel and the issuer’s practice with respect to other Exchange Act filings. However, we share below some observations from SRZ’s client base in this area.

Given the technical signature requirement of Form SD, issuers had a limited number of signatories to choose from. In most cases, Form SDs of SRZ client issuers were signed by either the chief financial officer or general counsel, in roughly equal proportion. In a substantially smaller percentage of cases, the chief executive officer or a manufacturing or supply chain executive signed the Form SD. At many SRZ clients, especially larger companies, manufacturing and supply chain personnel were not considered to be executive officers within the meaning of Rule 3b-7 and were therefore not eligible to sign the Form SD. In some cases, general counsel also were ineligible.

A significant percentage of SRZ client issuers, especially larger companies, listed someone other than the signatory as the contact person. Typically, the contact person was someone who regularly interacts with external constituencies with respect to the issuer’s filings or who has direct oversight or significant day-to-day involvement with the conflict minerals compliance program.

## Location of Website Disclosure

The Conflict Minerals Rule requires an issuer to disclose certain information regarding its RCOI, as well as its CMR, on its website. Placement was and is expected to continue to primarily be driven by an issuer’s overall website layout and content, so we also did not examine this item as part of our Sample Group review.

However, we note that, across SRZ’s issuer client base, this information was most commonly included in the Investor Relations section of the website with the issuer’s other SEC filings. To a lesser extent, issuers with separate corporate social responsibility (“CSR”) sections on their websites (which tended to be larger companies) included this information in that section or provided a link within the CSR section to the Investor Relations page where the information was located.

# Take-Aways for the 2014 Compliance Period

## Filings Will Continue to Evolve, Including Yours

Many issuers are expected to significantly modify their filings for calendar year 2014. Some issuers will be playing catch-up to their competitors and other peers with respect to both compliance and disclosure. Other issuers that already had robust compliance programs and disclosure will want to selectively beef up discrete elements of their disclosure to reflect more modest program enhancements and disclosure best practices from other filings and/or to get more credit for all the work that they are doing.

As a starting point, issuers should review their filings against those of appropriate competitors and other peers. However, remember that the compliance programs and filings of competitors and other peers will also undergo improvement and will not remain static.

Many issuers are also expected to significantly update their disclosure to reflect increased supply chain visibility. In particular, more issuers are likely to report smelter and refiner information.

When preparing their calendar year 2014 disclosure, issuers should also consider the feedback on the calendar year 2013 filings from NGOs and SRIs. A frequent criticism from these constituencies is that the filings were, on balance, difficult to follow. In many cases, issuers should focus on improving the organization and readability of their filings. For example, issuers should consider using more topic headings and sub-headings as well as shorter bulleted or numbered points.

NGOs and SRIs have also criticized filings for generally lacking substance, indicating that in many cases the level of disclosure was not sufficient to them to demonstrate that issuers are performing a credible RCOI or due diligence. Specific examples cited include:

- The level of information concerning efforts to determine which countries the conflict minerals in products were sourced from;
- How suppliers' due diligence practices are assessed; and
- The steps taken to identify and mitigate supply-chain risk.

## Expect Pressure from NGOs, SRIs and Other Constituencies to Increase

NGOs, SRIs and research and analytics providers are in the process of reviewing conflict minerals filings. Once their review has been completed, at least some issuers should expect further engagement by NGOs and SRIs to encourage improvements in the issuers' conflict minerals reporting and/or traceability measures. These efforts may take the form of one-on-one engagement, public statements and shareholder proposals, among other things.

For example, in mid-August, the Enough Project published its Interim Jewelry Leaderboard Methodology Report, which pertains to conflict gold sourced from the eastern DRC. As part of its scoring, the Enough Project took into account disclosures contained in issuers' Form SDs and CMRs.

In addition, later in the year, the Responsible Sourcing Network is expected to publish an additional expectations document for issuers, building upon its two prior expectations documents.

## Continue to Build Out the OECD Guidance Framework

As suggested by the calendar year 2013 filings, a substantial number of issuers still need to build out at least some elements of their compliance programs, although many issuers have made significant progress in that regard over the last few months. This should continue to be a focus for issuers for the remainder of the 2014 compliance period. Issuers that have not already done so should develop an action plan and timetable for the continued implementation of their RCOI and due diligence procedures and other compliance program elements. In doing so, issuers should be mindful of the compliance measures that they already have indicated in their calendar year 2013 filing that they intend to take.

## Most Issuers Will Continue to Wait on an Audit

There is likely to continue to be only a small number of IPSAs for calendar year 2014. Although NGOs and SRIs have indicated that they would like to see more independent audits, thus far, most issuers do not appear to be inclined to undergo an audit until they are required to do so, which will not occur until the calendar year 2015 compliance period at the earliest.

Issuers should, however, consider undertaking a more rigorous program review this year — whether internally or with the help of outside advisers — with a view to determining whether their compliance programs would satisfy, when and if an audit is required, what is commonly referred to as the “first audit objective” under the Conflict Minerals Rule. This audit objective requires the auditor to express an opinion or conclusion as to whether the design of the issuer’s due diligence measures as set forth in and for the applicable compliance period conforms with, in all material respects, the criteria set forth in the nationally or internationally recognized due diligence framework used by the issuer, namely the OECD Guidance.

## Use the CFSI Conflict Minerals Reporting Template for 2014

As indicated earlier in this *White Paper*, a significant percentage of issuers used the Template to assist with their calendar year 2013 Conflict Minerals Rule compliance. Public and private companies that did not do so last year should consider using the Template for calendar year 2014. A new version of the Template, Revision 3.01, is now available for free downloading on the CFSI’s website. This year, companies should use Revision 3.01 or later, rather than prior revisions of the Template.

*“Issuers that have not already done so should develop an action plan and timetable for the continued implementation of their RCOI and due diligence procedures and other compliance program elements.”*

## Join the CFSI

Approximately 14 percent of the Sample Group indicated in their filings that they are CFSI members. This number has continued to grow since the calendar year 2013 filings were made.

CFSI membership is used by issuers to efficiently satisfy Step 4 of the OECD Guidance, independent third-party audits of smelter and refiner due diligence practices. Issuers also use the smelter and refiner country of origin information that the CFSI makes available only to its members to more efficiently and effectively complete their RCOIs.

## Focus on Supplier Education and Training

Many issuers recently began to send out Template requests to their suppliers, and a significant number plan on doing so shortly. As part of the outreach process, issuers should consider enhancing their supplier education and training. Some issuers already provide suppliers with guidance on completing the Template, the issuer's compliance expectations and Conflict Minerals Rule compliance generally through in-person meetings, online training and/or substantive written materials. However, most issuers have done fairly little in this regard, limiting their supplemental outreach to more perfunctory communications.

Issuers with robust supplier education and training around conflict minerals compliance often have had higher supplier response rates than other issuers as well as higher quality responses. In addition, by investing more resources on the front end, many issuers have reduced their compliance costs on the back end, often by a multiple of their up-front investment.

Supplier training should also be refreshed this year due to personnel churn. In many cases, supplier personnel who were involved with compliance for calendar year 2013 have moved on to other jobs within the supplier or with other companies.

Issuers should also encourage, and even consider requiring, relevant supplier personnel to review the online training tools offered by the CFSI that address how to complete the Template. In addition to the Template, the CFSI offers a range of other tools and resources to companies, including guidance documents for downstream companies, online introductory trainings on conflict minerals due diligence and biannual workshops that bring together industry, government and civil society groups to discuss conflict minerals due diligence best practices.

Suppliers should also be made aware of and encouraged to review selected content in SRZ's online [Conflict Minerals Resource Center](#), which is the most comprehensive online source of materials relating to conflict minerals compliance. Many companies, not just SRZ clients, are including a link to the SRZ Conflict Minerals Resource Center in their overview communications to suppliers and on their supplier portal.

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## About SRZ's Conflict Minerals Compliance Practice

SRZ has a leading conflict minerals compliance and responsible sourcing practice that, among other things, advises public and private companies and trade associations on the application of the U.S. Conflict Minerals Rule, the OECD Guidance framework and other conflict minerals legislation and initiatives. For more information concerning the firm's practice in this area, please contact Michael R. Littenberg at michael.littenberg@srz.com or +1 212.756.2524, or visit [SRZ's Conflict Minerals Resource Center](#).

## About the Conflict-Free Sourcing Initiative

Founded in 2008 by members of the Electronic Industry Citizenship Coalition and the Global e-Sustainability Initiative, the Conflict-Free Sourcing Initiative has grown into one of the most utilized and respected resources for companies from a range of industries addressing conflict minerals issues in their supply chains.

The CFSI's flagship Conflict-Free Smelter Program offers companies and their suppliers an independent, third-party audit that determines which smelters and refiners can be validated as "conflict-free" in line with current global standards. It also offers the Conflict Minerals Reporting Template, which helps companies disclose and communicate about smelters in their supply chains, and it produces white papers and guidance documents on responsible conflict minerals sourcing and reporting on a regular basis.

Over 200 companies and associations from seven different industries participate in the CFSI today, and it regularly collaborates with other complimentary programs and initiatives in this area. The CFSI also runs a twice-yearly Conflict-Free Sourcing Initiative Workshop, which brings together hundreds of representatives from industry, government and civil society for updates, in-depth discussions and guidance on best practices on responsible mineral sourcing. As more companies work on this issue, the CFSI hopes for a future in which businesses can contribute positively to the fostering of peace and stability in the Great Lakes region of Africa.



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