

**DODD-FRANK  
SECTION 1502  
—  
FILING  
EVALUATION**

**RY2016**



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# Executive Summary

Reporting year (RY) 2016 represents the fourth year issuers submitted their conflict mineral disclosure (CMD) to the U.S. Securities and Exchange Commission (SEC) pursuant to Section 1502 of the Dodd-Frank *Wall Street Reform and Consumer Protection Act*.

As of July 10, 2017, 1,153 issuers filed a CMD describing their due diligence on conflict minerals in their supply chains. We note an overall 5.6% drop in companies filing a conflict minerals disclosure vis-à-vis reporting year 2015. This percentage is slightly higher than prior years, which saw an average filing decrease of 4%.

One hundred and twenty-five (125) issuers did not file a RY2016 Conflict Mineral Report (CMR), which had done so for the previous year. Thirty (30) of these 125 former CMR filers did submit a Form SD, whereas 95 did not file anything for RY2016. Yet the great majority of companies continued to file according to their existing compliance obligations.

	<i>RY2015</i>	<i>RY2016</i>	<i>change (absolute)</i>	<i>percent change</i>
<i>Form SD-only filings</i>	235	241	6	<b>+2.5%</b>
<i>CMR filings</i>	985	911	74	<b>-7.5%</b>
<i>total filings</i>	1,220	1,153	67	<b>-5.6%</b>
<i>IPSA filers</i>	19	16	3	<b>-15.8%</b>

With respect to Independent Private Sector Audits (IPSA), 16 companies opted to undertake an IPSA for RY2016, representing 3 fewer companies than in RY2015 (one of which, however, was acquired in 2016 and no longer subject to SEC filings). In all, 10 Attestations and 6 Performance Audits were conducted. Eight (8) companies specified their product(s) was/were *DRC conflict free* without having undertaken an IPSA. Four (4) companies had an IPSA performed but did not make a *DRC Conflict Free* claim.

As last year, this report empirically benchmarks the latest filings through two dimensions: compliance with *Securities and Exchange Commission* (SEC) Final Rule and conformance with the *Organisation for Economic Cooperation and Development* (OECD) Due Diligence Guidance.

Among those issuers that filed a CMR, the average SEC compliance score improved by 5 percentage points as compared to RY2015 (from 79% to 84%).

In spite of the addition of 2 new indicators to the OECD section for RY2016, the average OECD conformance score of CMR filers improved by 2 percentage points. One hundred and thirty-two (132) CMR filers earned an OECD conformance score between 75% and 100% for RY2016.

A litmus test of enabling due diligence continues to be issuer support of industry initiatives that facilitate independent third-party audits of Smelters or Refiners (SORs), as well as the requirement, on the part of many issuers, that their suppliers source tin, tungsten, tantalum and gold (3TG) through SORs that are audited through an Independent 3<sup>rd</sup> Party (I3P). We note 9% of companies reported that the degree of I3P audited SORs in their 3TG supply chain was above 90%.

In all, 3 companies earned a perfect score on both SEC compliance and OECD conformance, and 313 companies – 27.1% of all filers – earned at least 75% on the combined SEC-OECD score, representing an increase of 197 companies that made it into this cohort as compared to RY2015.

In general, the study finds that the majority of companies subject to Dodd-Frank Section 1502 remain committed to conflict minerals due diligence.



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We are furthermore grateful to iPoint and Elm Sustainability Partners for sponsoring this year's Conflict Minerals benchmarking study.

This report is dedicated to the memory of Dr. Eamon Kelly (1936 - 2017), president of Tulane University from 1981 to 1998, and a friend and teacher of many.

## I. Context

### A. Conflict Minerals regulatory status

#### 1. U.S.

SEC Acting Chairman Michael Piowar's January 31, 2017 statement on the Commission's Conflict Minerals Rule and call for comments was an opportunity for stakeholders to take inventory of what Dodd-Frank Section 1502 – and the SEC rule by extension – has or has not accomplished in the way of the legislative intent. Development International (DI) as well submitted a letter to the SEC, arguing that the issue of conflict minerals has, in fact, become material from an investor and shareholder point of view, and that the corporate exercise of due diligence, in light of continued exposure and risk of 3TG links to conflict in the DRC, is still necessary.<sup>1</sup>

This feedback, as stated by Piowar, was intended to be considered for future Commission action. Yet four Senators on the Senate Banking Committee sent a letter to the SEC's Office of Inspector General requesting an investigation into whether Piowar had the authority to revisit the conflict minerals rule in the first place: "Commissioner Piowar's actions may lack adequate justification, undermine the SEC's mission, exceed his authority as Acting Chairman, violate other procedural

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<sup>1</sup> For reporting year 2015, 456 issuers discussed "conflict minerals" – most in the "Risk Factors" section – of their 10-Ks submissions to the SEC. See letter from Development International to Acting SEC Chairman Michael Piowar, March 16, 2017, [http://docs.wixstatic.com/ugd/f0f801\\_eef4fa96cd1e4feeabb9e479c26a751d.pdf](http://docs.wixstatic.com/ugd/f0f801_eef4fa96cd1e4feeabb9e479c26a751d.pdf)



requirements, and could potentially prove to be a waste of the SEC staff's precious time and resources."<sup>2</sup>

Then, on April 7, 2017, Acting Chairman Michael Piowar issued a statement that he would not recommend the SEC's enforcement of an issuer's Conflict Mineral Report filing: "In light of the foregoing regulatory uncertainties, until these issues are resolved, it is difficult to conceive of a circumstance that would counsel in favor of enforcing Item 1.01(c) of Form SD."<sup>3</sup> This, however, does not mean the compliance obligation of conducting due diligence and filing a CMR under the existing rule is thereby effectively lifted. In its *Updated Statement on the Effect of the Court of Appeals Decision on the Conflict Minerals Rule*, the SEC Division of Corporation Finance stated: "This statement is subject to any further action that may be taken by the Commission, expresses the Division's position on enforcement action only, and does not express any legal conclusion on the rule."<sup>4</sup>

Once again, a group of six Senators promptly reacted to Piowar's statement in a letter addressing him: "Any steps to repeal or modify the requirements of the law require action by Congress. Any attempt to modify the rule requires a transparent, formal review and opportunity to comment by all stakeholders [...]. As Acting Chairman, you do not have the authority to direct a halt to enforcement."<sup>5</sup> The letter further decries the "dangerous precedent set when an Acting Chairman decides which laws the SEC should enforce." SEC Commissioner Kara Stein, as well, had choice words for Piowar: "It is unprecedented for one commissioner, acting alone and without official notice and comment, to engage in de facto rulemaking," she said. "It represents a troubling attack not only on the Commission process, but also on the restraints of government power."<sup>6</sup>

In sum, we note that despite Acting Chairman Piowar's statements, from an affected issuer's compliance standpoint, there is no meaningful guidance, legislative, or regulatory change for RY2016 compared to RY2015. The statutory due diligence mandate stands.

## 2. E.U.

In May 2017, the European Union passed its own conflict mineral regulation, which requires all but the smallest EU importers of tin, tungsten, tantalum, gold and their ores (based on specific annual importation thresholds) to perform due diligence on their suppliers worldwide.<sup>7</sup> The legislation notably differs from Dodd-Frank Section 1502 in that the EU requires due diligence for 3TG and

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<sup>2</sup> Letter from Senators Elizabeth Warren, Robert Menendez, Sherrod Brown, Brian Schatz to the Honorable Carl W. Hoecker, Inspector General of the Securities and Exchange Commission, March 29, 2017, [https://www.warren.senate.gov/files/documents/2017\\_03\\_29\\_SEC\\_IG\\_letter.pdf](https://www.warren.senate.gov/files/documents/2017_03_29_SEC_IG_letter.pdf)

<sup>3</sup> SEC, Statement of Acting Chairman Piowar on the Court of Appeals Decision on the Conflict Minerals Rule, Public Statement, April 7, 2017, <https://www.sec.gov/news/public-statement/piowar-statement-court-decision-conflict-minerals-rule>

<sup>4</sup> SEC, Updated Statement on the Effect of the Court of Appeals Decision on the Conflict Minerals Rule, Public Statement, SEC Division of Corporation Finance, April 7, 2017, <https://www.sec.gov/news/public-statement/corpfin-updated-statement-court-decision-conflict-minerals-rule>

<sup>5</sup> Letter from Senators Cory Booker, Sherrod Brown, Chris Coons, Dick Durbin, Patrick Leahy and Elizabeth Warren to the Acting SEC Chairman Michael Piowar, April 26, 2017, <https://www.scribd.com/document/346487033/04-26-17-Ltr-to-SEC-Acting-Chairman-Piowar-Re-Suspension-of-1502-Conflict-Minerals-Rule>

<sup>6</sup> Sarah Lynch, SEC halts some enforcement of conflict minerals rule amid review, Reuters, April 7, 2017, <http://www.reuters.com/article/us-usa-sec-conflictminerals-idUSKBN1792WX>

<sup>7</sup> On May 17, 2017, the legal text of the EU's conflict minerals regulation was finalized, and published in the Official Journal of the European Union, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2017:130:FULL&from=IT>



their derivatives not just from the DRC but from “conflict-affected and high-risk areas” in general, i.e. the entire globe.

The regulation also features the OECD Due Diligence Guidance<sup>8</sup> (the “OECD Guidance”) as a robust foundation upon which Union importers are to base their due diligence efforts. Under “Article 5 Risk management obligations:” “1. Union importers of minerals shall: (a) identify and assess the risks of adverse impacts in their mineral supply chain on the basis of the information provided pursuant to Article 4 against the standards of their supply chain policy, consistent with Annex II and the due diligence recommendations of the OECD Due Diligence Guidance.” The regulation also directs “union importers of minerals or metals” – consistent with the OECD Guidance – to “establish a grievance mechanism as an early-warning risk-awareness system or provide such mechanism through collaborative arrangements with other economic operators or organisations, or by facilitating recourse to an external expert or body such as an ombudsman.” Furthermore, union imports are to “operate a chain of custody or supply chain traceability system.” This reliance on the OECD Guidance in the E.U. regulation is one more reason why OECD conformance criteria are being evaluated in this study.

In terms of disclosure, “Union importers of minerals or metals” will be required to report, in a manner similar to what is required by Section 1502, inter alia: “their supply chain policy for the minerals and metals potentially originating from conflict affected and high-risk areas,” as well as their supply chain due diligence “practices for responsible sourcing.”

The regulation also makes provisions for an E.U. “list of global responsible smelters and refiners” permitting “transparency and certainty to downstream economic operators.” The text further specifies: “That list shall be drawn up taking into account global responsible smelters and refiners covered by supply chain due diligence schemes recognised by the Commission pursuant to Article 8 and the information submitted by Member States pursuant to Article 17(1).”

These rules become binding starting in January 2021.

## *B. Collective action on Conflict Minerals*

### 1. SOR audits

Affected industries have brought to bear concerted pre-competitive collective action in line with the letter and the spirit of the law. Notably the Conflict Free Sourcing Initiative (CFSI)<sup>9</sup> – a 360 member-strong group of companies and associations,<sup>10</sup> including Electronic Industry Citizenship Coalition (EICC) and Global e-Sustainability Initiative (GeSI) members – has taken great strides with an all-hands-on-deck approach focusing in particular on the smelters and refiners of 3TG:

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<sup>8</sup> OECD (2016), OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264252479-en>

<sup>9</sup> The Conflict-free Sourcing Initiative is the umbrella program under which the CFSP, CMRT and other activities are folded.

<sup>10</sup> including automotive, apparel, retail, medical devices, telecommunications, electronics, jewelry, equipment manufacturers, etc.



- i. Created SOR assurance system: The concept of the Conflict Free Smelter Program (CFSP) was first agreed upon in December 2009 – an assurance system in which the first conflict-free designation was awarded in December of 2010.<sup>11</sup> As of June 30, 2017, tantalum leads the pack, with 100% of identified worldwide tantalum smelters participating in the program (see *Table 1*).<sup>12</sup> The tin and tungsten SORs are almost tied at second place, while the gold industry noticeably lags behind. Consequently, the non-audited SOR bottleneck is narrowing, and one can now talk of a critical mass of CFSP-compliant 3T SORs.
- ii. Stipulated SOR audit policy: Starting in the Fall of 2010,<sup>13</sup> SORs sourcing from the Covered Countries would have to demonstrate that their sourcing practices and management systems were in alignment with the OECD Guidance in order to meet the CFSP’s requirements.
- iii. Identified universe of smelters and refiners: In a matter of years the CFSI turned an extremely opaque market into an increasingly transparent one, fully accounting for the 3TG bottleneck, which as of June 30, 2017 consisted of a “universe” of 325 SORs.<sup>14</sup>

*Table 1: CFSP’s active and compliant SORs out of total SORs*

	Tantalum	Tin	Tungsten	Gold
Eligible SORs	45	84	46	150
Active SORs *	1	4	3	9
Compliant SORs	44	72	40	97
SORs not participating in CFSP	0	8	3	44
<b>% of SORs either active or compliant out of total SORs</b>	<b>100%</b>	<b>90.4%</b>	<b>93.5%</b>	<b>70.7%</b>

Source: CFSI, as of June 30, 2017

\* Active SOR: an SOR that, for a start, has submitted a signed Agreement for the Exchange of Confidential Information and Auditee Agreement contracts, which commits it to undergo a CFSP audit or is participating in one of the cross-recognized certification programs for the SOR-tier: *London Bullion Market Association’s* (LBMA) Responsible Gold Certification or *Responsible Jewellery Council’s* (RJC) Chain-of-Custody Certification. SORs “on the Active list are at various stages of the audit cycle, anywhere from completion of the necessary documents to scheduling the audit date to enacting corrective actions in the post-audit phase.”<sup>15</sup>

<sup>11</sup> The term “conflict-free” in reference to CFSP draws on the SEC definition of the term and focuses on the Covered Countries (CC) as defined by the SEC. The OECD definition, in contrast, more holistically regards risk-based supply chain due diligence not in absolute terms, but rather frames it as an ongoing process in which companies and their pre-competitive associations continually assess new information and respond to risks they identify. The goal of risk-based supply chain due diligence is risk management and mitigation, recognizing that supply chain risks are inevitable and are present in virtually all supply chains originating from conflict affected and high-risk areas. While the objective is indeed “conflict free” 3TG, the present reality in the CC and the maturity of the traceability and assurance systems render such a status extremely difficult to achieve with 100% certainty. The objective, as is embraced by a number of issuers, is the pursuit of responsible sourcing of minerals in conflict-affected and high-risk areas where conflict financing is likely to occur.

<sup>12</sup> CFSI, Conflict-Free Smelter Program Indicators, accessed June 30, 2017, <http://www.conflictreesourcing.org/members/active-and-compliant-smelter-count/>

<sup>13</sup> At the time, there were very few audited SORs, which created a problem for downstream companies. To date, not all EICC members or CFSI members source solely from CFSP validated smelters.

<sup>14</sup> The “SOR universe” is dynamic due to closures, new entrants, and operation suspensions, also predicated on the global business climate for each mineral/metal. See: CFSI, CMRT (version 5.01), accessed June 30, 2017, <http://www.conflictreesourcing.org/conflict-minerals-reporting-template/>

<sup>15</sup> CFSI, Active Smelters & Refiners, accessed June 30, 2017, <http://www.conflictreesourcing.org/active-smelters-refiners/>



The CFSP and the other industry audit systems (LBMA and RJC) have taken a continuous improvement approach since their inception, further defining audit scope, improving audit methodologies, building auditor capacities and increasing transparency of its processes.<sup>16</sup> Yet to date, certain information is available only to CFSI members and SOR audit reports (or summaries thereof) are not available to the larger universe of filers or civil society. This could be a point of increasing concern as a recent case of fraud was made public involving a LBMA-audited gold refiner that was sourcing illegal gold from Latin America and reports of fraud and smuggling are increasingly in the media.<sup>17</sup>

Reasons for the lower percentage of participating gold refineries that participate in independent third-party assurance programs include:

## SUPPLY SIDE

- *Upstream supply chain structures*

Many gold refiners source from a vast and diversified web of buyers and middlemen in the gold sector, many of whom obscure the true origin of the metal. The DRC Artisanal and Small-Scale Mining (ASM) industry is a case in point: 80% of artisanal miners in eastern DRC have turned to gold mining, artisanal-scale gold mines are spread all over the country, most of which have not been registered or validated.<sup>18</sup> The sheer geographic distribution of 3TG mining in undeveloped forest or jungle terrain, the informal nature of artisanal gold mining in the first place, as well as the fact that gold is easily and discretely hidden and transported, are all fertile ground upon which armed groups may prey in a context of lawlessness. Much of this gold ends up on the informal market: “Numerous small refineries process doré bars, low-grade material, and scrap for use in jewelry fabrication or sale to other fabricators, thus bypassing bullion certification.”<sup>19</sup>

- *Prior absence of upstream gold traceability*

Only in 2017 have initiatives come online to trace conflict-free and legal artisanal gold from DRC mine sites to the point of export:

- (1) The Better Sourcing Program (BSP) started validating conflict-free artisanal gold since February 2017, with a monthly production of 1.1 kg thus far sourced from Rwanda.<sup>20</sup>
- (2) A similar initiative is also on the horizon in the DRC: operated by Partnership Africa Canada (PAC), after two years of testing, the Just Gold project has reportedly “implemented a system to trace legal and conflict-free artisanal gold in the Democratic Republic of Congo.” Applying

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<sup>16</sup> CFSP has undergone two external reviews (in 2010 to assess conformance and compatibility with various programs, and an ISO/IEC 17021:2011 conformity assessment in 2014) with two others underway (ISEAL membership third party review and the OECD Alignment Assessment). Only the 2010 review seems to be available publicly to date (see <http://www.estellelevin.com/wp-content/uploads/2013/12/ConformanceAndCompatibilityAnalysis.pdf>). While improvements have been made in CFSP processes and transparency as a result of these reviews, the public reporting of audit execution and audit metadata outcomes – such as corrective action – would provide stakeholders more confidence in the system.

<sup>17</sup> Michael Smith and Jonathan Franklin, How to Become an International Gold Smuggler, Bloomberg, March 9, 2017, <https://www.bloomberg.com/news/features/2017-03-09/how-to-become-an-international-gold-smuggler>

<sup>18</sup> Ken Matthysen, Lotte Hoex, Yannick Weyns, Analysis of the interactive map of artisanal mining areas in eastern DR Congo - 2015 UPDATE, IPIS, October 25, 2016, <http://ipisresearch.be/publication/analysis-interactive-map-artisanal-mining-areas-eastern-dr-congo-2/>

<sup>19</sup> Micheal George, Conflict Minerals From the Democratic Republic of the Congo—Gold Supply Chain, U.S. Geological Survey, Fact Sheet 2015–3075, Version 1.1, December 2015, <https://pubs.usgs.gov/fs/2015/3075/fs20153075.pdf>

<sup>20</sup> See, e.g., BSP’s data dashboards:

DRC Country Dashboard: [http://bit.ly/Better\\_Sourcing\\_Dashboard\\_DRC](http://bit.ly/Better_Sourcing_Dashboard_DRC)

Rwanda Country Dashboard: [http://bit.ly/Better\\_Sourcing\\_Dashboard\\_Rwanda](http://bit.ly/Better_Sourcing_Dashboard_Rwanda)



regional and international chain of custody standards, the system will encourage legal artisanal gold from the DRC to enter the legitimate gold market.<sup>21</sup>

Thus, only this year have upstream initiatives come online that can feed GLR-origin gold into I3P audited SORs.<sup>22</sup> As of now, compared to “responsible 3T”, “responsible gold” has a lot of catching up to do.

- *Chemically homogeneous nature of gold complicating traceability*

Gold is far more chemically homogeneous than 3T, and the process of refining gold is much easier than smelting 3T. As the Department of the Interior’s U.S. Geological Survey (USGS) explains: “Unlike the 3T minerals, which are chemically heterogeneous, gold is often found in its elemental form and shows little or no chemical variation. Thus, it is unlikely that gold from a conflict region could be tagged as such through chemical analysis of the product.”<sup>23</sup> Furthermore, gold can be refined on site first through gravity separation and then through mercury amalgamation. Heat treating the amalgam then boils off the mercury. This, in part, explains why it is so easy, in the absence of robust controls, for ASM gold originating from Africa to simply be characterized as recycled gold, e.g. as was a documented practice in Dubai for example.<sup>24</sup> Smelting 3Ts requires much more complex industrial operations. 3T ore can also be “fingerprinted” before smelting, whereas gold cannot.<sup>25</sup>

## DEMAND SIDE

- *Lack of concerted political will for due diligence frameworks and gold traceability*

Major jurisdictions which govern buyers/sellers of gold, such as India or UAE, do not have due diligence frameworks in place, which creates inconsistent expectations and sourcing behavior. The UAE does not have a national due diligence law and there are widely-acknowledged concerns with the Dubai Multi Commodities Centre (DMCC) requirements for gold refiners. Unless further cooperation between governments and companies, leads to pressure on and actual containment of the remaining uncooperative SORs, the aggregate due diligence process will not move beyond a large-scale boycotting exercise to become an actual contribution to peace and security in the DRC. As shown by Japanese Professor Mizuno, 4,954 businesses have it in their power to largely contain the trade in conflict-tainted minerals.<sup>26</sup>

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<sup>21</sup> PAC, First Responsible and Conflict-Free Artisanal Gold Supply Chain Operational in Eastern Congo, *May 17, 2017*, <http://www.pacweb.org/en/pac-media/press-releases/279-first-responsible-and-conflict-free-artisanal-gold-supply-chain-operational-in-eastern-congo>

<sup>22</sup> A third potential assurance mechanism for conflict-free gold is Fairtrade Gold. The Fairtrade Gold Standard underpins the certification of gold from Artisanal and Small-Scale Mining (AMS) organizations who meet its responsible mining criteria. Currently, a few gold mines in Latin America supply Fairtrade Gold. Expansion to Africa is reportedly under-way. See: Fairtrade Labelling Organizations International, Gold, <https://www.fairtrade.net/products/gold.html>

<sup>23</sup> See footnote 19.

<sup>24</sup> See paragraph 214 in the UN Security Council Letter dated 12 January 2015 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council, S/2015/19, 12 January 2015, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2015/19](http://www.un.org/ga/search/view_doc.asp?symbol=S/2015/19)

<sup>25</sup> Through a method developed by BGR; see footnote 42.

<sup>26</sup> Mizuno found that a finite and definable set of companies have the *ability* to tackle the problem of conflict-tainted minerals from the GLR via their sourcing relationships. See: Mizuno, T., Ohnishi, T. & Watanabe, T. EPJ Data Sci. (2016) 5: 2. <http://link.springer.com/article/10.1140/epjds/s13688-016-0063-7>

- *Obscuring of supply chain traceability through international smuggling*

The very prospect of refiner-level auditing is further complicated by the fact that the smuggling of gold is politically tolerated or effectively incentivized through price differences. Gold has a “high value/volume ratio, narrow price margins and differing taxation levels between Great Lakes countries”, which results in a strong incentive to engage in contraband and smuggling.<sup>27</sup> An estimated 98% of gold extracted through artisanal mining is smuggled out of the DRC according to a 2014 UN Group of Experts, and there is no indication that this practice has changed. A 2015 UN Group of Experts report found that “there was virtually no progress in addressing gold smuggling in 2014 in the DRC and Uganda, and scant evidence of interest in traceability and due diligence by those Governments or by the Government of the UAE,” to date a major importer of African-mined gold.<sup>28</sup> It is furthermore worth noting that as (1) gold smuggling is not unique to the GLR, and (2) that controlling for illicit or conflict-tainted gold originating from the Great Lakes Region (GLR) only makes up only a small fraction of world production, these issues are emblematic of wider accountability issues in the gold industry at large.

- *Phase-in of LBMA’s RCOI reporting requirements*

A critical transparency-enhancing policy, that sends a clear message down the supply chain, was only recently issued by the LBMA. As of January 2017, Country of Origin (COO) reporting became mandatory for LBMA’s gold refiner members, which are subject to the LBMA’s Responsible Gold Guidance (RGG).<sup>29</sup> The absence of this requirement had previously been a limiting factor for issuers performing an RCOI on gold, who had also faced resistance from gold refineries refusing to make known the COO(s) of the gold. While the LBMA is the world’s largest central gold bullion accreditor,<sup>30</sup> whose gold refiner members are subject to the LBMA’s RGG that includes risk-based due diligence to avoid contribution to conflict, to date gold also passes through certain exchanges (e.g., Shanghai Gold Exchange) that have non-validated refiners in their supply chains.

## 2. Responsible mining and traceability

With sufficient downstream engagement, responsible mining and sourcing initiatives may be further scaled up and matured. SORs may obtain responsibly sourced raw material through a number of upstream programs which provide traceability information accompanying the material. The largest 3<sup>rd</sup> party verification system, in terms of 3T volume to leave the GLR, is the *ITRI Tin Supply Chain Initiative* (iTSCi) program. Run by UK-based ITRI Ltd, a not-for-profit, membership-

<sup>27</sup> Resolve, In region/upstream efforts to encourage legal sales of gold, June 9, 2017, <http://www.resolve.org/site-ppa/files/2015/07/Joanne-Pres-Gold-in-region-efforts-for-PPA-June-9-2015.pdf>

<sup>28</sup> UN Group of Experts on the Democratic Republic of Congo (2015). Final Report, S/2015/19, 12 January 2015, New York: United Nations.

<sup>29</sup> “The Responsible Gold Guidance (RGG) became a formal requirement of Good Delivery for all LBMA accredited gold refiners in January 2012. Since then, all 71 gold refiners have completed their independent third party audit with no instances of zero-tolerance non-compliances.” “The RGG is based on the OECD Due Diligence Guidance issued in December 2010 as well as Swiss and US KYC, Anti-Money Laundering and Combating Terrorist Financing regulations. The structure of the Guidance combines and expands leading refiners existing AML, KYC and security policies, management systems and audit processes to include risk-based due diligence in order to avoid contribution to conflict.” See: LBMA, A guide to The London Bullion Market Association, May 2017, [http://www.lbma.org.uk/assets/downloads/presspack/LBMA\\_Overview\\_Brochure.pdf](http://www.lbma.org.uk/assets/downloads/presspack/LBMA_Overview_Brochure.pdf)

<sup>30</sup> As one of the world’s oldest gold exchanges, the 71 gold refiners on the LBMA’s Good Delivery List produce 85 to 90 percent of globally refined gold. “The List includes the refiners which have met the LBMA’s requirements for assaying accuracy and bar quality and whose large bars are therefore acceptable in the London vaults operated by a number of LBMA members.”

based organization, iTSCi facilitates the responsible production and trade of 3T. Its mechanism relies on the following components:

- a) Chain of custody (traceability including bar-coded tags, added to each bag of minerals at the first two steps of the supply chain: extraction and processing);
- b) Risk assessment (honing in on the supply chain operators, the operating context, the mine sites and transportation routes through field visits, document verification, whistle-blowing mechanisms through local stakeholder committees, and data analysis);
- c) Publicly-available incident reporting at the local level, with documentation of the incidents and related corrective actions taken;
- d) Independent third-party audits of all supply chain operators each year.<sup>31</sup>

Operating in the DRC, Burundi and Rwanda, iTSCi facilitated the production and movement of 75,878 metric tons of 3T between 2012 to mid-2016, of which it exported 71,838 metric tons of 3T, roughly half of which was produced in the DRC.<sup>32</sup> The UN Group of Experts recognized that illegal activity has been reduced where the iTSCi due diligence program was introduced.<sup>33</sup> Here, credit must be given where credit is due.

In spite of the security context and civil unrest in the DRC, scaling up a program certifying conflict-free 3T production in the DRC – that has a positive impact on reducing conflict in 3T – is a feat. A 2015 International Peace Information Service (IPIS) survey found that in the eastern DRC overall, of the 2,026 artisanal mining sites surveyed, 80% of the artisanal miners work on a gold site.<sup>34</sup> The 3T minerals sectors employ an estimated 16% of the miners. Although IPIS observed an armed presence in more than half of the mines in total, it also found that 79% of 3T miners surveyed worked in conflict-free mines. These findings furthermore signal meaningful progress in the 3T mining sectors.

Thus far, no DRC mining area has qualified for BSP's electronic traceability yet, which employs the Geotraceability electronic traceability solution – a tagging & scanning system which allows for immediate data reconciliation. Yet in Rwanda BSP has successfully traced and validated 167 tonnes (184.086 tons) of tungsten and 12 tonnes (13.2 tons) of tantalum.<sup>35</sup>

Where systems are being built and refined, issues will invariably emerge:

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<sup>31</sup> ICGLR, The ITRI Tin Supply Chain Initiative (iTSCi), <http://enact-kp.streamhouse.org/the-itri-tin-supply-chain-initiative-itsci/>

<sup>32</sup> iTSCi, iTSCi Data Summary Q1 2012 to Q2 2016, 2017 [https://www.itri.co.uk/index.php?option=com\\_mtree&task=att\\_download&link\\_id=55658&cf\\_id=24](https://www.itri.co.uk/index.php?option=com_mtree&task=att_download&link_id=55658&cf_id=24)

<sup>33</sup> See, e.g., the December 2016 letter by the Group of Experts on the DRC noting, in the context of the ITRI Tin Supply Chain Initiative, that the group believes “armed elements have fewer opportunities to interfere in the tin, tantalum and tungsten supply chain” in comparison with the gold sector. UN Security Council, Letter dated 23 December 2016 from the Group of Experts on the Democratic Republic of the Congo addressed to the President of the Security Council, 28 December 2016, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2016/1102](http://www.un.org/ga/search/view_doc.asp?symbol=S/2016/1102)

<sup>34</sup> Ken Matthysen, Lotte Hoex, Yannick Weyns, Analysis of the interactive map of artisanal mining areas in eastern DR Congo - 2015 UPDATE, IPIS, October 25, 2016, <http://ipisresearch.be/publication/analysis-interactive-map-artisanal-mining-areas-eastern-dr-congo-2/>

<sup>35</sup> Direct communication with authors, July 7, 2017.

1. The context in which mining takes place in the GLR practically dictates that there will be “incidents.”<sup>36</sup> Publishing these identified risks and incidents provides the public with evidence that due diligence is being carried out. iTSCi, as indicated above, issues public quarterly incident reports, which are reviewed e.g. by issuer working groups and other concerned stakeholders. The overall iTSCi incident resolution between 2011 and 2016 lies at just about 1/3<sup>rd</sup> (with 2,089 out of 3,063 incidents resolved).<sup>37</sup> BSP, as well, produces risk management data and has reported on 27 incidents in 2017, 19 of which have been managed and resolved.<sup>38</sup>
2. While the costs of traceability mechanisms (levy fees and associated taxes) are commonly borne by miners and upstream market actors, with efforts to render efficient existing programs, (e.g. cross-recognition between assurance programs and reducing the audit/assessment frequency), monitoring, and assurance costs can be brought down to sustainable rates.
3. Where formalized systems are introduced to informal settings, they are going to be tested by opportunistic or subversive interests. To counter the laundering of illegal minerals through green sites<sup>39</sup> or surrounding countries such as Rwanda,<sup>40</sup> operational checks and balances, increased border security, as well as the application of traceability and mineral fingerprinting technology are likely to increase the rate in catching smuggling and fraud.<sup>41</sup> In particular, BGR’s proof of concept on 3T fingerprinting means each mine could, in theory, be awarded a geological passport.<sup>42</sup>

<sup>36</sup> Incidents include: extortion of miners, conflict near mines, leakages, fraudulent tags, and non-conformance to laws and recognized standards – e.g. child labor and the worst forms of child labor (WFCL) – which have been noted by many local civil society and the UN GoE.

<sup>37</sup> Serious, Level 1, gross human rights abuses at iTSCi monitored locations remain low -- at 97 incidents -- between 2011 and 2016.

<sup>38</sup> Direct communication with authors, July 7, 2017.

<sup>39</sup> The government-led certification scheme developed in the framework of the International Conference on the Great Lakes Region (ICGLR) is implemented in parallel to other industry-led initiatives. Known as the ICGLR Regional Mineral Certification (RCM) Framework, it is a blueprint for government-certification mine site validation program in which multiple stakeholder participate in an annual site audits, whereby sites are either designated a green or red. Currently, the DRC and Rwanda are participating. The initiative has however been criticized thus far for being top-heavy, slow to develop and insufficiently operational and scaled to reach its assurance goals. For more information see: BGR, The ICGLR Regional Mineral Certification Framework, [https://www.bgr.bund.de/EN/Themen/Min\\_rohstoffe/CTC/Concept\\_MC/RCM-Mechanism/RCM\\_mechanism\\_node\\_en.html](https://www.bgr.bund.de/EN/Themen/Min_rohstoffe/CTC/Concept_MC/RCM-Mechanism/RCM_mechanism_node_en.html)

<sup>40</sup> As for example indicated or evidenced through: (1) implausible Rwandan production rates, and (2) frequent documented incidents of cross-border smuggling. That said, in 2015 the UN Group of Experts observed: “164. During its interviews in North Kivu with miners, civil society organizations, provincial authorities and businessmen, the Group was repeatedly told that although smuggling had declined since the launch of the tin supply chain initiative system, it remained a problem.”

UN Security Council. Letter dated 12 January 2015 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council, S/2015/19, 12 January 2015, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2015/19](http://www.un.org/ga/search/view_doc.asp?symbol=S/2015/19)

<sup>41</sup> Anecdotal evidence suggests that fraud, smuggling in particular, is occasionally caught, e.g.:

Kira Zalan, Tracing conflict gold in the Democratic Republic of the Congo, Public Radio International, July 14, 2017, <https://www.pri.org/stories/2017-06-23/tracing-conflict-gold-democratic-republic-congo>

<sup>42</sup> The Bundesanstalt für Geowissenschaften und Rohstoffe (BGR) pioneered the Analytical Fingerprint (AFP) method that uses geochemical features preserved in 3T concentrates (comparing a sample from a shipment in question to reference samples of the documented origin stored in a database) and applied statistics to offer proof of origin within the framework of mineral certification. Mine operators in the Great Lakes Region seeking certification under the ICGLR and CTC schemes are required to allow AFP reference sampling on their concession area or else risk being yellow-flagged. As part of technical cooperation efforts within the regional German support program running from 2011-2019, BGR aims to make the AFP method available to the International Conference on the Great Lakes Region

4. Disenfranchised miners and local politics divorced from the mining process can be engaged and brought around by obtaining their “social license.” Information on the extent of a mining community’s mining buy-in and general wellbeing is obtained e.g. through the local advisory committees that iTSCi uses or BSP’s Social Audit Verification methodology, the latter which involves interviewing miners and other community members on local ASM conditions.<sup>43</sup> That information provides an additional risk mitigation check, on top of the production data tracked by the traceability system.

Where local support for responsible mining is secured, vicious cycles involving militia-driven conflict are more likely to be broken.<sup>44</sup> Watchdog mechanisms in the form of monitoring and traceability initiatives provide necessary transparency and credence to claims of “responsible 3TG.” In the long run, each system’s business model will need to stand on its own without donor funding, and the program design must be feasibly supported by local market mechanisms to be sustainable. Downstream-upstream cooperation, pre-competitive, joint audit initiatives, and limited overlap/competition between monitoring and traceability initiatives are steps in that direction.

### *C. Security situation in the DRC*

The DRC is host to the most expensive peacekeeping operation in history, yet the government and international peacekeepers struggle to contain outbursts of armed conflict and atrocities in the DRC.<sup>45</sup> The security condition remains precarious. Between mid-2016 and mid-2017, 1.3 million people have been displaced and more than 600 schools have been attacked or destroyed, affecting an estimated 1.5 million children.<sup>46</sup> Eighty (80) mass graves were recently found in the diamond territory of Kasai, a region in which an estimated 3,383 people were recently killed.<sup>47</sup>

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(ICGLR) and partners. See: BGR, Introduction to the Analytical Fingerprint, [https://www.bgr.bund.de/EN/Themen/Min\\_rohstoffe/CTC/Analytical-Fingerprint/analytical\\_fingerprint\\_node\\_en.html](https://www.bgr.bund.de/EN/Themen/Min_rohstoffe/CTC/Analytical-Fingerprint/analytical_fingerprint_node_en.html)

<sup>43</sup> BSP is currently fielding such mine-level monitoring across 5 mining areas – 57 mine sites – in the DRC, and has interviewed 1,190 miners. These sites and BSP’s Rwanda sites can be monitored on BSP’s dashboard (see footnote 20).

<sup>44</sup> A prime example of how 3T mining the DRC can be organized as a formal, legal mining operation that enjoys full community support is the tin mine in Bisie launched by Alphamin. After being the object of a militia attack, Alphamin has since invested millions of dollars up front to build roads, set up public telecommunication, as well as build housing and school structures using solar power at the mine site. Alphamin’s Bisie mine in the eastern DRC will reportedly produce 9,642 tons of conflict-free tin for at least 12.5 years. The first production of tin in concentrate is scheduled to take place in Q4 of 2018. See: Alphamin, <http://alphaminresources.com/our-business/>

<sup>45</sup> With 22,461 total uniformed personnel deployed in the DRC (as of 29 May 2017), MONUSCO’s mission has cost over US\$10 billion since 1999 and a current budget of US\$1.31 billion (1 July 2016 to 30 June 2017).

See: MONUSCO, <https://monusco.unmissions.org/en/facts-and-figures>

<sup>46</sup> Ida Sawyer and Jason Stearns, The U.N.’s Tragic Inaction on Congo, June 14, 2017, <https://www.nytimes.com/2017/06/14/opinion/united-nations-congo-killings.html>

<sup>47</sup> See:

- (i) Aaron Ross, U.N. identifies 38 more mass graves in Congo’s Kasai region, Reuters, July 12, 2017, <https://www.reuters.com/article/us-congo-violence-idUSKBN19X1UA>
- (ii) Robyn Dixon, They’re killing babies and torching villages: Who is behind the Democratic Republic of Congo’s ugly new war?, June 26, 2017, <http://www.latimes.com/world/africa/la-fg-drcongo-war-kasai-20170626-htmlstory.html>
- (iii) Al Jazeera, UN: Another 38 probable mass graves found in DR Congo, July 12, 2017, <http://www.aljazeera.com/news/2017/07/38-probable-mass-graves-dr-congo-170713021127720.html>



In an effort to identify elements behind the atrocities, Michael Sharp and Zaida Catalan, members of a panel of six U.N. experts authorized by the U.N. Security Council to investigate rapes, massacres and the exploitation of Congo's vast natural resources, were investigating the situation on the ground.<sup>48</sup> In March 2017, Sharp and Catalan were kidnapped and killed in Kasai.

Catalan and Sharp's initial findings indicated that the "Congolese government played a role in the massacre and broader chaos."<sup>49</sup> One specific subject of inquiry was the former Minister of Development "Clément Kanku, for his possible role in inciting violence in the Congolese region of Kasai last year," and in particular the burning of Tshimbulu. If substantiated, these events underscore the reality that in some instances agents of the Congolese government cannot be differentiated from other "armed groups" per the definition given in Dodd-Frank Section 1502.<sup>50</sup> The Congolese army (FARDC) has been previously identified on the U.S. Department of State's "Conflict Minerals Maps," and its 2014 Conflict Minerals Map notes that "some elements of the state security forces continue to engage in illegal extortion or control of the mineral trade."<sup>51</sup> In general, as government soldiers are often unpaid or underpaid, and even expected to derive their livelihood through extortion, their legitimacy on the part of local populations is called into question, which itself gives rise and a *raison d'être* for the formation of local militias.

Compounding matters is the fact that President Kabila's second mandate has expired. When the current government of President Kabila did not organize and hold presidential elections by December of 2016 as mandated by the country's constitution, the instability escalated. Riots and demonstrations resulted in forty (40) protestors being shot, hacked and burned by Kabila's security forces.<sup>52</sup> The situation in Kinshasa stabilized when the Catholic Church brokered an agreement in which the Kabila government committed to holding elections by the end of 2017.<sup>53</sup> For two decades one family has dominated the political economics of the country, which has every interest in the elections not taking place.<sup>54</sup> With 40% of the country's 67 million people professing

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(iv) IPIS map "COMPRENDRE LA SPIRALE DE LA VIOLENCE AU KASAÏ," April 25, 2017, <http://ipisresearch.be/publication/comprendre-la-spirale-de-la-violence-au-kasai/>

<sup>48</sup> Kimiko de Freytas-Tamura and Somini Sengupta, For 2 Experts Killed in Congo, U.N. Provided Little Training and No Protection, MAY 20, 2017, <https://www.nytimes.com/2017/05/20/world/africa/congo-zaida-catalan-michael-i-sharp-united-nations-democratic-republic-of-congo.html>

<sup>49</sup> Ibid.

<sup>50</sup> "(2) Armed group. The term armed group means an armed group that is identified as a perpetrator of serious human rights abuses in annual Country Reports on Human Rights Practices under sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b)) relating to the Democratic Republic of the Congo or an adjoining country." See: Government Publishing Office, Conflict Minerals; Disclosure of Payments by Resource Extraction Issuers; Final Rules, 17 CFR Parts 240, 249, and 249b, Securities and Exchange Commission, Federal Register, Vol. 77, No. 177, Part II. <https://www.gpo.gov/fdsys/pkg/FR-2012-09-12/pdf/2012-21153.pdf>

<sup>51</sup> United States Government Accountability Office, Conflict Minerals -- Stakeholder Options for Responsible Sourcing Are Expanding, but More Information on Smelters Is Needed, GAO-14-575, June 2014, <http://www.gao.gov/assets/670/664440.pdf>

<sup>52</sup> Michael Kavanagh, Thomas Wilson, Franz Wild, With His Family's Fortune at Stake, President Kabila Digs In, Bloomberg, December 15, 2016, <https://www.bloomberg.com/news/features/2016-12-15/with-his-family-fortune-at-stake-congo-president-kabila-digs-in>

<sup>53</sup> Aaron Ross, Congo's Catholic church warns Kabila deal risks falling apart, January 23, 2017, <http://www.reuters.com/article/us-congo-politics-idUSKBN1571D6>

<sup>54</sup> See footnote 52.

to be Catholics, the centrality of the Congolese Catholic Church in the pursuit of the national interest is incontrovertible.<sup>55</sup>

#### *D. U.S. Government deliverables*

##### 1. U.S. Department of State

Dodd-Frank Section 1502 requires that the U.S. State Department produce a “Conflict Minerals Map” showing “mineral-rich zones, trade routes, and areas under the control of armed groups in the Democratic Republic of the Congo and adjoining countries.”<sup>56</sup> Such areas were to be designated “Conflict Zone Mines.” The map is to be made public and updated every 180 days.<sup>57</sup>

As they are no longer hosted on the State Department’s website, to the best of our knowledge there were three relevant “Conflict Minerals Maps” published by the Department of State’s Humanitarian Information Unit (HIU):

1. June 2010 <sup>58</sup>
2. May 2012 <sup>59</sup>
3. February 2014 <sup>60</sup>

It would appear that the State Department has thus repeatedly contravened the law, having consistently failed to deliver on its mandated deliverable to update the required map every 180 days.

When asked about the maps by the GAO in 2014, State officials reportedly “indicated that in the future the map may become digital rather than paper based.”<sup>61</sup> While to date no such digital map has been produced by the State Department, the Belgian research group IPIS has produced such georeferenced maps on which the State Department maps were, in part, based. One of IPIS’ research projects visualizes survey data collected in the eastern DRC, including the identification of

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<sup>55</sup> Karen Attiah, Can the Catholic Church save democracy in Congo?, January 6, 2017, [https://www.washingtonpost.com/news/global-opinions/wp/2017/01/06/can-the-catholic-church-save-democracy-in-congo/?utm\\_term=.59aba0065038](https://www.washingtonpost.com/news/global-opinions/wp/2017/01/06/can-the-catholic-church-save-democracy-in-congo/?utm_term=.59aba0065038)

<sup>56</sup> see “(c) Strategy and Map to Address Linkages Between Conflict Minerals and Armed Groups” under “(2) Map” See: U.S. Government Printing Office, DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT, 111th Congress Public Law 203, <https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/html/PLAW-111publ203.htm>

<sup>57</sup> “(C) Updates.-- <<NOTE: Deadline.>> The Secretary of State shall update the map required under subparagraph (A) not less frequently than once every 180 days until the date on which the disclosure requirements under paragraph (1) of section 13(p) of the Securities Exchange Act of 1934, as added by subsection (b), terminate in accordance with the provisions of paragraph (4) of such section 13(p).”

See: U.S. Government Printing Office, DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT, 111th Congress Public Law 203, <https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/html/PLAW-111publ203.htm>

<sup>58</sup> This resource is no longer found at:

([https://hiu.state.gov/Products/DRC\\_%20MineralExploitation\\_2010Jun28\\_HIU\\_U182.pdf](https://hiu.state.gov/Products/DRC_%20MineralExploitation_2010Jun28_HIU_U182.pdf))

<sup>59</sup> This resource is no longer found at:

([https://hiu.state.gov/Products/DRC\\_ConflictMinerals\\_2012May23\\_HIU\\_U540.pdf](https://hiu.state.gov/Products/DRC_ConflictMinerals_2012May23_HIU_U540.pdf))

<sup>60</sup> This resource is no longer found at:

([https://www.hiu.state.gov/products/DRC\\_ConflictMinerals\\_2014Mar03\\_HIU\\_U923.pdf](https://www.hiu.state.gov/products/DRC_ConflictMinerals_2014Mar03_HIU_U923.pdf))

It however can be viewed on page 44 in the GAO report: <http://www.gao.gov/assets/670/664440.pdf> or [http://reliefweb.int/sites/reliefweb.int/files/resources/DRC\\_ConflictMinerals\\_2014Mar03\\_HIU\\_U923.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/DRC_ConflictMinerals_2014Mar03_HIU_U923.pdf)

<sup>61</sup> United States Government Accountability Office, Conflict Minerals -- Stakeholder Options for Responsible Sourcing Are Expanding, but More Information on Smelters Is Needed, GAO-14-575, June 2014, <http://www.gao.gov/assets/670/664440.pdf>



the geographical presence of armed groups, which is displayed in an interactive digital map and updated in 2015.<sup>62</sup>

## 2. U.S. Department of Commerce

Under Section 1502, the U.S. Department of Commerce has two deliverables: (1) an annual assessment of IPSA accuracy and due diligence processes described, and (2) an annual “listing of all known conflict mineral processing facilities worldwide.”<sup>63</sup>

Having missed its first, January 2013 deadline, the Commerce Department’s International Trade Administration (ITA) did publish a SOR list in 2014, and relying primarily on data supplied by USGS, has subsequently updated their lists.<sup>64</sup> USGS itself has also published fact sheets discussing tin, tungsten, tantalum, and gold production in the DRC.<sup>65</sup>

However, Commerce has yet to produce an “assessment of the accuracy of the independent private sector audits and other due diligence processes described under section 13(p) of the Securities Exchange Act of 1934,” including “[r]ecommendations for the processes used to carry out such audits, including ways to (i) improve the accuracy of such audits; and (ii) establish

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<sup>62</sup> The IPIS map (<http://www.ipisresearch.be/mapping/webmapping/drcongo/v4>) provides information about the on-site presence of armed groups and the Congolese army (FARDC), whether mining sites have been ‘validated’ (licensed to operate) by the Congolese government, or if they are covered by a supply chain control mechanisms. The accompanying report “Analysis of the interactive map of artisanal mining areas in eastern DR Congo” provides an analysis of the collected data and guidance on how to use the interactive map. See: Ken Matthysen, Lotte Hoex, Yannick Weyns, Analysis of the interactive map of artisanal mining areas in eastern DR Congo - 2015 UPDATE, IPIS, October 25, 2016, <http://ipisresearch.be/publication/analysis-interactive-map-artisanal-mining-areas-eastern-dr-congo-2/>

<sup>63</sup> U.S. Government Printing Office, DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT, 111th Congress Public Law 203, <https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/html/PLAW-111publ203.htm>

<sup>64</sup> Trade relies on the USGS for this purpose as the USGS is the only official U.S. Government source of such information. “Upon request by Commerce, USGS prepared a listing of tantalum, tin, tungsten, and gold (3TG) mineral processing facilities. ITA used the USGS list as the master list, adding to and deleting from the list based on information obtained from other non-USG sources. The U.S. Geological Survey (USGS) prepared a listing of tantalum, tin, tungsten, and gold (3TG) mineral processing facilities, based upon a request by the U.S. Department of Commerce.” See: U.S. Department of Commerce, 2016 Dodd Frank Conflict Minerals Report, Office of Materials Industries (OMI), The International Trade Administration, <http://www.trade.gov/industry/materials/metal.asp>  
For the Commerce Department’s lists of global consumers of mineral concentrates see: [http://www.trade.gov/industry/materials/Dodd\\_Frank\\_Annual\\_DOC3TG\\_smelter\\_list\\_2016.pdf](http://www.trade.gov/industry/materials/Dodd_Frank_Annual_DOC3TG_smelter_list_2016.pdf)

<sup>65</sup> Notably:

1. **Gold:** Micheal George (2015), Conflict Minerals From the Democratic Republic of the Congo—Gold Supply Chain, U.S. Geological Survey, Fact Sheet 2015–3075, Version 1.1, December 2015, <https://pubs.usgs.gov/fs/2015/3075/fs20153075.pdf>
2. **Tantalum:** John F. Papp (2014), Conflict Minerals from the Democratic Republic of the Congo— Global Tantalum Processing Plants, a Critical Part of the Tantalum Supply Chain, U.S. Geological Survey, Fact Sheet 2014 –3122, December 2014, <https://pubs.usgs.gov/fs/2014/3122/pdf/fs20143122.pdf>
3. **Tin:** C. Schuyler Anderson (2017), Conflict Minerals from the Democratic Republic of the Congo— Tin Processing Plants, a Critical Part of the Tin Supply Chain, U.S. Geological Survey, Fact Sheet 2015 –3022, ver. 2.1 February 2017, <https://pubs.usgs.gov/fs/2015/3022/fs20153022.pdf>
4. **Tungsten:** Steven D. Textoris et al., Conflict Minerals from the Democratic Republic of the Congo: Global Tungsten Processing Plants, a Critical Part of the Tungsten Supply Chain, Fact Sheet 2014 –3069 Version 1.1, August 2014, <https://pubs.usgs.gov/fs/2014/3069/pdf/fs2014-3069.pdf>

standards of best practices.”<sup>66</sup> We provide an example of such an assessment in section 3. *OECD conformance in III. Results.*

## II. Methods

### A. Particularities of this year’s CMD evaluation

This year’s (RY2016) evaluation method is essentially the same as last year’s (RY2015). There are, however, two particular features in this year’s report worth highlighting.

#### 1. Individual company year-over-year filing type comparison

For this year’s report, we conducted an additional analysis identifying which companies did not file an Exhibit 1.01 (also referred to as a CMR) for RY2016, but which had filed one for RY2015. Given our understanding of the current legislative, regulatory, and legal status of the law and regulations, unless a company changed in a fundamental way (i.e. was acquired or no longer sourced 3TG from the Covered Countries), and made this change explicit in its Form SD, it was – according to our understanding of the law and SEC Rule – obliged to submit an Exhibit 1.01. Development International (DI) will make these filing status lists available to stakeholders upon request.

#### 2. Addition of two new OECD-based indicators

Given developments observed in the exercise of due diligence on the part of 3TG-based markets, this year’s report added two indicators in the OECD section. The first inquires whether the issuer requires its suppliers to source through SORs that have successfully undergone an I3P audit. The second asks whether the issuer reported on the identification of SOR-level risks under Step 2, and how those risks were mitigated (Step 3). To assess such risk mitigation, each CMR’s SOR list was cross-referenced with eight (8) high-risk SORs. If there was any overlap, and the filer discussed a relevant risk mitigation system, the point was awarded. For more details on each indicator, see *Appendix B: Indicators.*

### B. Data

This study focuses on data in the form of conflict minerals filings submitted by issuers to the SEC as recorded by the SEC’s Electronic Data Gathering, Analysis, and Retrieval System (EDGAR). By July 10, 2017, 1,153 issuers had filed a CMD with the SEC for reporting year 2016. These filings comprised the data “universe” which we evaluated. Apart from verifying whether the referenced URL in the Form SD or CMR would lead to the stated company website, for evaluation purposes only EDGAR was consulted as the source of data. The only other external (non-CMD) data consulted comprised issuer profile data which was obtained through the Compustat North America database.

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<sup>66</sup> This study’s Principal Investigator hosted an orientation workshop for a dedicated, cross-Commerce working group on the subject in January of 2017.



This report (version 1) adopted July 10th, 2017 as the cut-off date: issuers that filed a CMD for reporting year 2016 before this date were taken into account in this study, while those which filed after this date were not considered.

## C. Evaluation criteria

### Section 1: SEC Compliance Indicators

The SEC compliance indicators are premised on DI's interpretation of the law's legislative intent, the current legal obligations under the SEC Rule<sup>67</sup> and other subsequent SEC guidance and communication. Prior to their deployment, these indicators were reviewed and critiqued by members of the Stakeholder Forum.

A distinction is made between 3 types of filers:

#### 1. **Regular Form SD-only filers (seven criteria)**

The same seven (7) evaluation criteria were applied to the Form SD-only filers as compared to last year's assessment.

#### 2. **Form SD-only filers reporting chemical compound exclusion**

As last year, one category of Form SD-only filers stated that their chemical compound(s) do not comprise(s) "conflict minerals" per SEC definitions and subsequent clarifications. These issuers chose to file a Form SD, presumably out of an abundance of caution.<sup>68</sup> Such filers provided a statement along these lines: *Based on SEC guidance regarding the applicability of the Conflict Minerals Rule to chemical compounds, we do not believe that our necessary product(s) contain(s) a "Conflict Mineral."*

#### 3. **Form SD & CMR filers (fifteen criteria)**

The fifteen (15) RY 2016 SEC compliance indicators for the Form SD & CMR filers are identical to those criteria applied in RY2015.

### Section 2: OECD Conformance Indicators

The SEC rule specifically requires that companies' due diligence conform to an internationally recognized due diligence framework. As per the Rule:

*The Conflict Minerals Report must include the following information:*

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<sup>67</sup> Government Publishing Office, Conflict Minerals; Disclosure of Payments by Resource Extraction Issuers; Final Rules, 17 CFR Parts 240, 249, and 249b, Securities and Exchange Commission, Federal Register, Vol. 77, No. 177, Part II. <https://www.gpo.gov/fdsys/pkg/FR-2012-09-12/pdf/2012-21153.pdf>

<sup>68</sup> In particular, the SEC guidance communicated to law firm Keller and Heckman, in which the SEC confirmed that companies using chemical compounds derived from a 3TG to manufacture products are not required to conduct any RCOI associated with these compounds and are not otherwise required to submit any report to the SEC. However, the SEC made clear that alloys containing a 3TG would remain subject to the rule, as would companies that use a 3TG in its raw metal form to manufacture a chemical compound (e.g., a catalyst manufacturer that buys and uses tin to produce an organotin catalyst). While the documentation of this exchange exists only in the form of the Keller and Heckman letter, since this letter was posted to the SEC website, the Principal Investigator assumes the representations in this letter reflect the SEC's official position. The Principal Investigator's assumption in this regard has been confirmed by experts who have personally met with the SEC staff on this matter and received verbal assurance that the letter fully reflects the staff's position. The Keller and Heckman letter may be found here: <https://www.sec.gov/comments/s7-40-10/s74010-596.pdf>



- (1) *Due Diligence: A description of the measures the registrant has taken to exercise due diligence on the source and chain of custody of those conflict minerals;*  
(i) *The registrant's due diligence must conform to a nationally or internationally recognized due diligence framework, if such a framework is available for the conflict mineral;*<sup>69</sup>

The SEC Rule also notes that the only internationally recognized due diligence framework available – at the time – was the one featured in the OECD Guidance.<sup>70</sup> Ever since the Rule's inception, the OECD Guidance has served as the default due diligence framework for companies. This year, we thus hone in on the company's conformance with the OECD's 5-step due diligence framework.

Drawing on the OECD's Guidance as the indicator source code, eighteen (18) evaluation indicators were selected, an additional two (2) as compared with last year's sixteen (16). These indicators exhibit the following qualities:

1. These indicators reflect the OECD's normative goal of corporate due diligence facilitating and encouraging responsible sourcing with the ultimate goal of effectively reducing conflict.
2. These indicators draw on elements required in both the 3T and the Gold supplements; however, where the sub-steps differ, the Gold Supplement served as the model.
3. These indicators comprise one to two specific OECD directives from each sub-step.
4. Through the notes accompanying each indicator, the indicators are operationalized for the context of corporate conflict mineral programs under Dodd-Frank Section 1502.
5. While the OECD Guidance more broadly focuses on "conflict-affected and high-risk areas," in the context of CMD under Dodd-Frank Section 1502, these indicators are scoped to the DRC and adjoining countries (Covered Countries).
6. The responses to all applicable questions are a binary yes or no for the sake of enhanced objectivity.
7. A distinction is made between Form SD-only filers and CMR filers: Whereas a CMR filer would be assessed according to all 5 OECD steps, a Form SD-only filer would complete only select indicators in steps 1, 2 and 5 (see eligibility column in *Section 2: OECD-based Due Diligence Indicators*).
8. These indicators are framed such that they would also apply to issuers who are also active at the SOR tier, yet assumes that an issuer active at the SOR level will also be active on downstream tiers.
9. Achieving high marks on these indicators would reflect the degree to which a company applied the OECD Guidance to its conflict minerals due diligence program.
10. These indicators are sufficiently specific to provide stakeholders with an impression of issuer supply-chain engagement and action.

### Section 3: Additional Indicators

In addition, fourteen (14) select indicators relevant to SEC compliance or OECD Guidance conformance were applied. These indicators, however, were not part of a company's scores.

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<sup>69</sup> Government Publishing Office, Conflict Minerals; Disclosure of Payments by Resource Extraction Issuers; Final Rules, 17 CFR Parts 240, 249, and 249b, Securities and Exchange Commission, Federal Register, Vol. 77, No. 177, Part II. <https://www.gpo.gov/fdsys/pkg/FR-2012-09-12/pdf/2012-21153.pdf>

<sup>70</sup> See, e.g., page 56281 of the SEC Rule (Federal Register).



D. Analyses

1. Evaluation scoring

For the sake of clarity, and to minimize subjectivity, binary yes/no criteria were applied to the SEC compliance and the OECD conformance indicators. Furthermore, no weighting was applied to either indicator set: every indicator was worth one point. "NA" was not counted in the score denominator.

The score is a reflection of the quality of a company's report – i.e. the degree to which a filer's disclosure complies and conforms to the evaluation criteria – but not necessarily the quality of their conflict mineral program (CMP). The latter we cannot and do not judge through this evaluation. That said, we do observe that the quality of a company's report is generally indicative of the quality of its CMP.

2. Evaluation analyses

Descriptive statistics and measures of central tendencies are the main quantitative analyses applied. The aggregate value of each indicator is presented, and year-over-year averages are provided. Furthermore, industry-specific breakdowns are offered for both the total SEC compliance and OECD conformance indicators scores.

E. Evaluation team, orientation, and data quality control

The evaluation team comprised legal professionals – Bryanna Frazier, Esq. and Jesse H. Hudson, J.D. – who had served as evaluators on last year's evaluation team, led by Dr. Chris Bayer, the study's Principal Investigator. In order to ensure all team members had the same level of understanding, adopted the same evaluation approach, and applied the evaluation criteria identically, an initial orientation workshop was held, followed by regular meetings.

F. Stakeholder Forum

The study's Stakeholder Forum functions as a peer review to the study's Principal Investigator. The Stakeholder Forum's objective is to offer a critique of the draft indicators and draft evaluation report. The Forum, thus, has absolutely no involvement in data collection, evaluation, nor scoring, and the Principal Investigator, in every instance, has the final word. Participation in the Stakeholder Forum is not an endorsement of the report or its findings.

Stakeholder Forum 2017	
Dr. Katie Böhme	iPoint
Leah Butler	CFSI
Lawrence Heim	Elm Sustainability Partners
Mike Loch	Responsible Trade
Carly Oboth	Global Witness
Kristen Sullivan	Deloitte & Touche
Ilya Gilman	
Gail Sutherland	Tetra Tech

G. Independence of investigators / competing interests statement

As last year, the study's Principal Investigator oversaw the evaluation's format, approach, and indicators. And, as last year, the data were collected and scores awarded solely by the evaluation team. Particular filings were randomly assigned to each evaluator, and a system was in place that evaluators would report, when appropriate, any possible competing interest with respect to any particular issuer, in which case the specific filing was re-assigned.



The study’s Principal Investigator and evaluators declare that they have no competing interests or conflict of interests in their execution of this evaluation. They do not knowingly directly own stocks or other forms of equity in any evaluated issuer, in the entities making up the study’s Stakeholder Forum, or in the study’s sponsors. In sum, they had no known vested interests vis-à-vis the individual scores and findings of this study.

*H. Scorecards and data review requests*

The company scorecards are available for purchase on [this page](#).

A data review for individual filers who disagree with or have questions about their scorecard is possible in the form of a consultation. The consultation period this year will take place throughout the month of August, 2017. To book a consultation, please access [this page](#). In the event that DI makes a change to your score based on the consultation, the consultation fee is reimbursed.

DI will, at some point, make public the final scorecards on its website.

**III. Results**

*A. Number and type of filings*

For reporting year 2016, 1,153 issuers had filed a conflict mineral disclosure by July 10, 2017. We note in *Table 2* an overall 5.6% drop in companies filing a conflict minerals disclosure vis-à-vis reporting year 2015. This percentage is slightly higher than prior years as we see in *Figure 1*, which saw an average filing decrease of 4%. Some of the observed variation can be explained by dynamic markets in which many mergers, acquisitions, consolidations, and privatizations occurred. We note that the great majority of companies continued to file according to their existing compliance obligations.

*Table 2: Type of filings over time*

	<i>RY2015</i>	<i>RY2016</i>	<i>change (absolute)</i>	<i>percent change</i>
<i>Form SD only filings</i>	235	241	6	<b>+2.5%</b>
<i>Form SD + CMR filings</i>	985	911	74	<b>-7.5%</b>
<i>total filings</i>	1,220	1,153	67	<b>-5.6%</b>

While 125 issuers did not file a CMD in RY2016 that had previously filed – either a Form SD or a Form SD + CMR – but had filed a CMD for the first time for RY2016. Thirty (30) issuers were Form SD-only filers that did not file for RY2016. Ninety-five (95) filers which had filed an Exhibit 1.01 (CMR) for RY2015 have yet to file even a Form SD for RY2016. Twenty-four (24) former CMR filers only submitted a Form SD (and no CMR).<sup>71</sup>

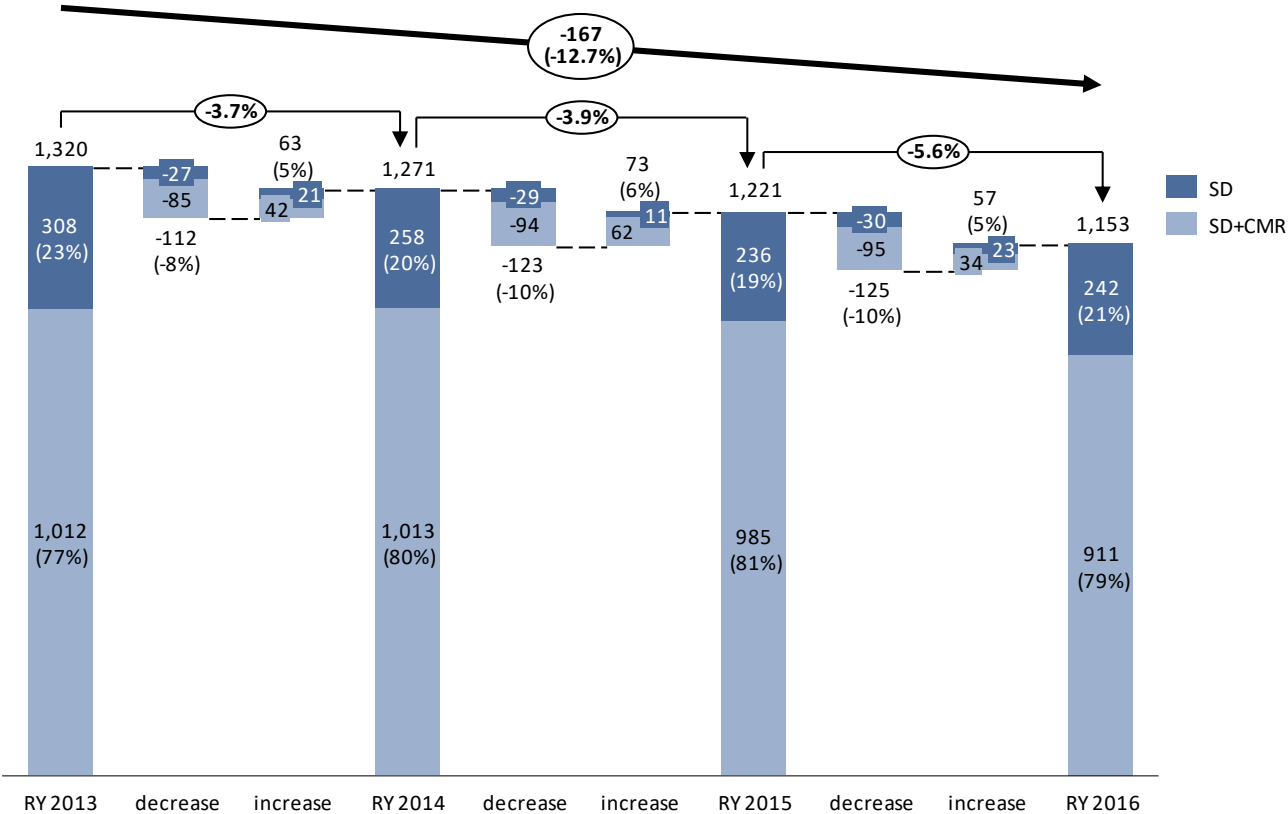
<sup>71</sup> DI will make these filing status lists available to stakeholders upon request.

Overall, the proportion of Form SD-only vs. CMR filers has remained roughly the same, hovering around 80% (see *Figure 1*). When companies file a CMR, they either know that the necessary 3TG in their products originated from the Covered Countries, or did not have enough certainty to rule out the possibility. Therefore, in 2016, we may conclude that 79% of companies' necessary 3TG originated from the Covered Countries, whereas 21% reportedly did not. This illustrates the fact that with globalizing markets, minerals from the CCs are widely consumed by U.S. public companies.

For RY2016, 30 Form SD-only filers should have filed a CMR based on their description of their own case. We consequently re-classified them as a CMR filer. For example, one such mistake committed by Form SD-only filers is that they conflate CFSP-compliant (at the SOR level under the Conflict-Free Smelter Program) as either "DRC conflict free" or as not sourcing from Covered Countries at all.<sup>72</sup>

One (1) company among the Form SD-only filers claimed they were de-facto Rule-excluded based on the particular chemical compound(s) they used. Yet filings that affirmatively claim the issuer is exempt from the Rule are not required by the SEC.

*Figure 1: Filing type (year over year)*

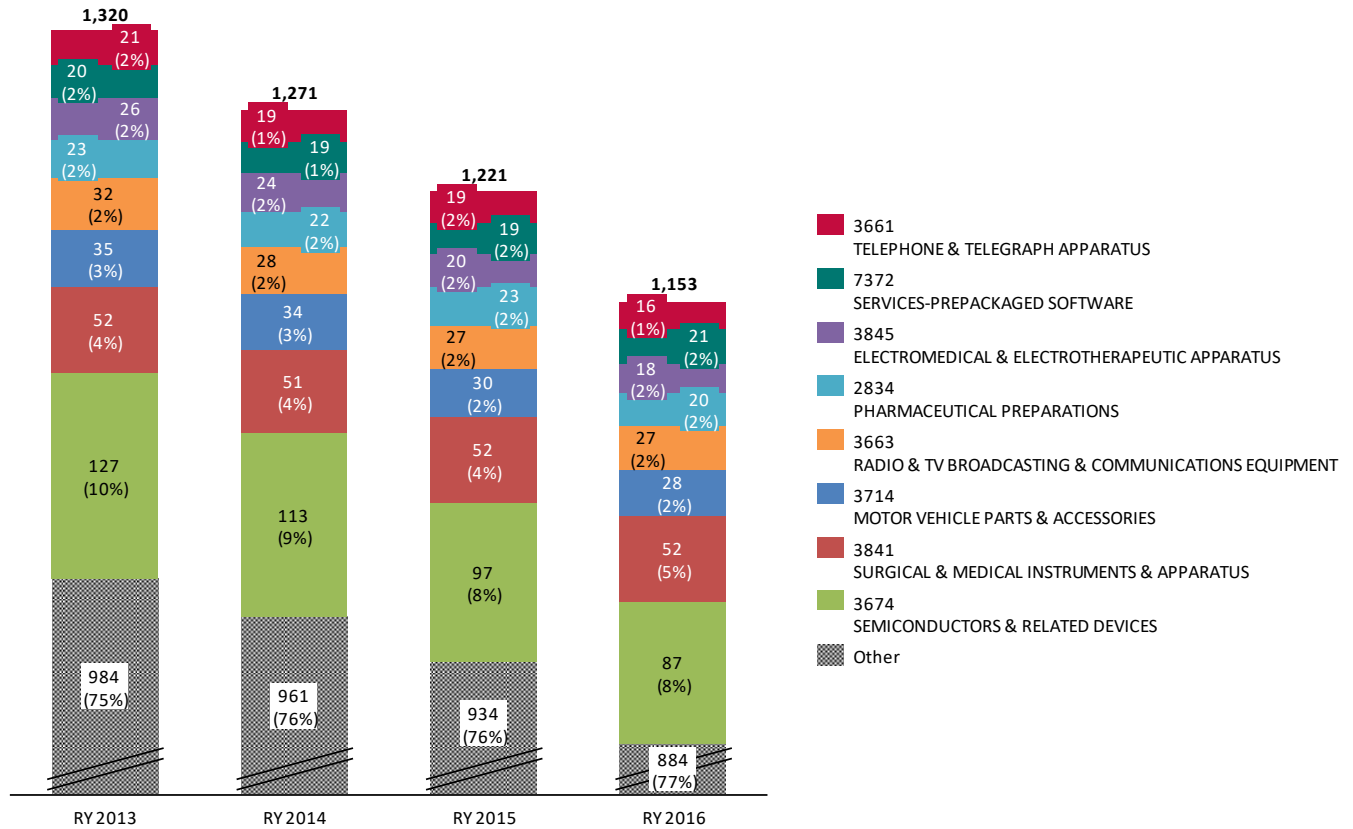


<sup>72</sup> See, e.g. the [Form SD](#) submitted by Unilever N.V. as well as the [Form SD](#) submitted by Unilever PLC: “[The suppliers] confirmed that the components contain tin, tungsten or gold and provided information about the origin of these minerals, including the identity of any known smelter. There is no indication from the responses received that the tin, tungsten or gold may have originated in the Covered Countries, unless from a smelter independently certified as conflict free.”



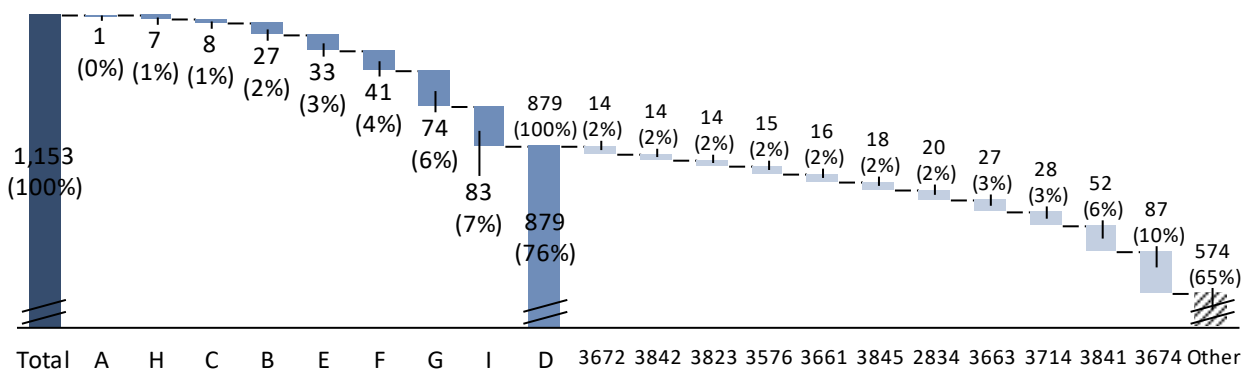


**Figure 3: Manufacturing industry**



The *Semiconductors & Related Devices* cohort is the largest among the manufacturers, which, however, only made up 8% of the total, as presented in *Figure 3*. *Figure 4* combines both graphs, which visually reveals the proportions of each sector and industry.

**Figure 4: SIC division and manufacturing industry**



### C. Evaluation results

#### 1. SEC compliance

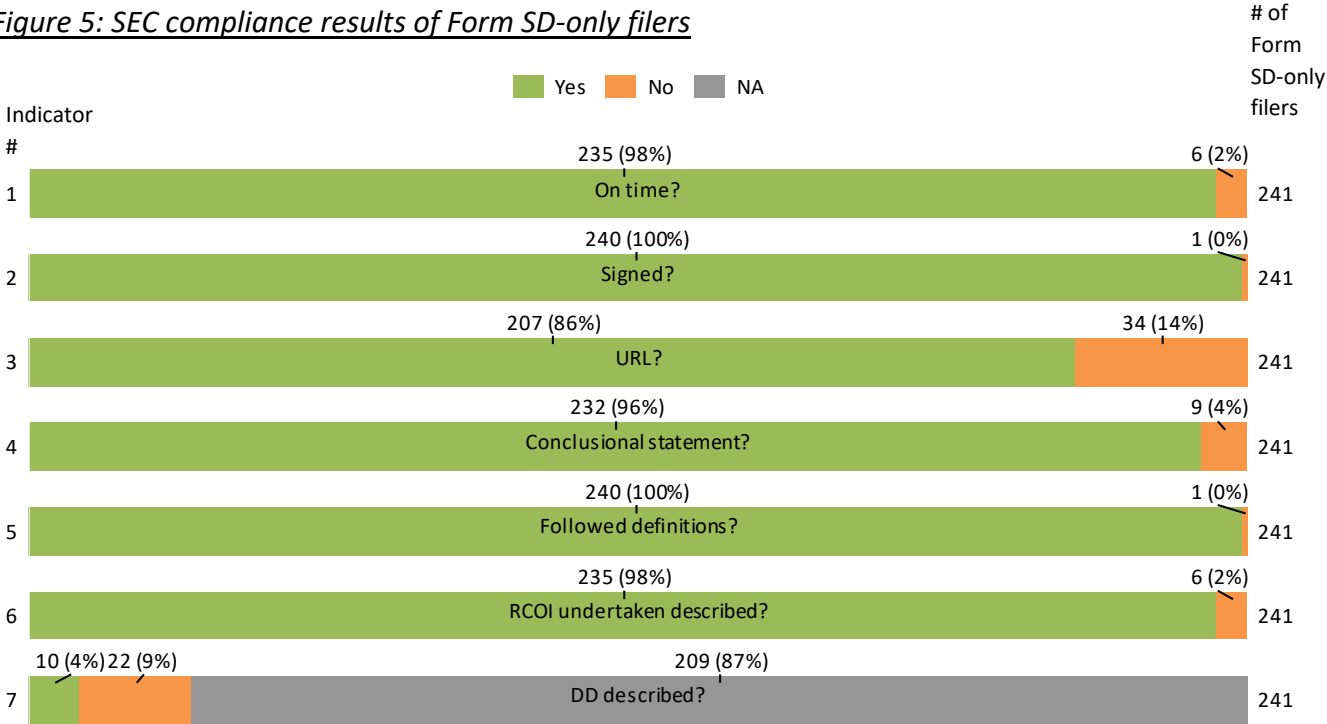
##### a. Regular Form SD-only filers (seven criteria)

Our 7-point SEC compliance criteria were applied to 241 Form SD-only filers. The data represented in this section exclude the 30 Form SD-only filers that, due to identified issues, we had to re-classify as CMR filers based on their incorrect RCOI conclusion.

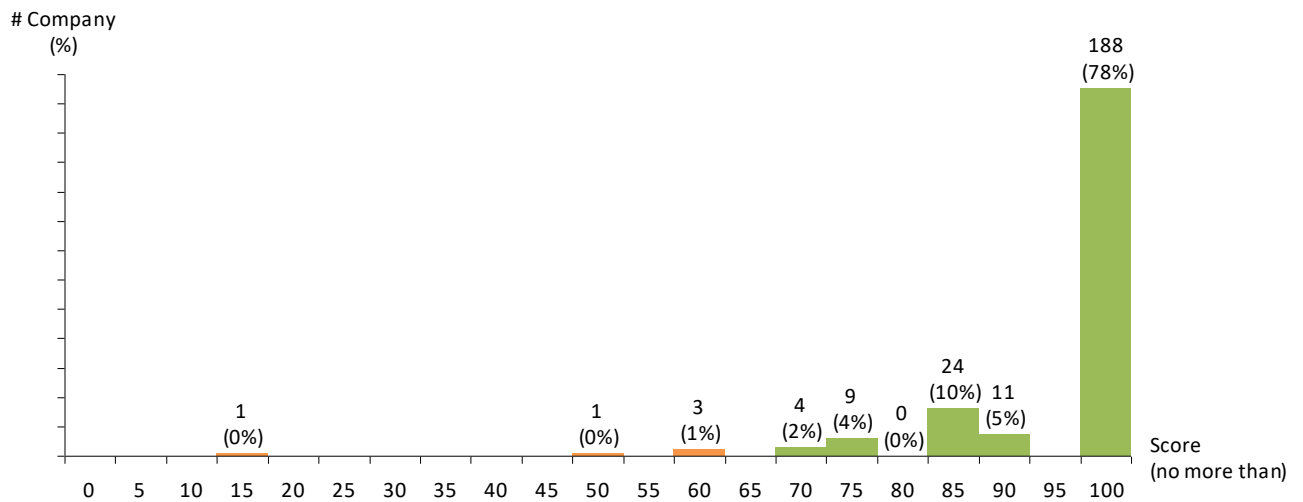
Overall, the Form SD-only filers indicate satisfactory compliance with the 7-point criteria. Last year, a fourth of such filers had the issue that the URL on the Form SD to their web site was either not provided, not working, or did not point the reader to the indicated resource. For 2016, 14% of Form SD-only filers had this problem (see *Figure 5*). The proportion of companies that conducted due diligence but did not properly discuss this process in their disclosure increased from 0% to 9% between RY2015 and RY2016.

Plotting the scores of the Form SD-only filers on a histogram produces the graph in *Figure 6*, and displaying their scores as percentiles yields *Figure 7*. Seventy-eight percent (78%) of Form SD-only filers had 100% compliance – an 8-percentage point improvement over last year. In all, 93% of Form SD-only filers were at or above the 75% compliance mark, and the group averaged a compliance score of 95%.

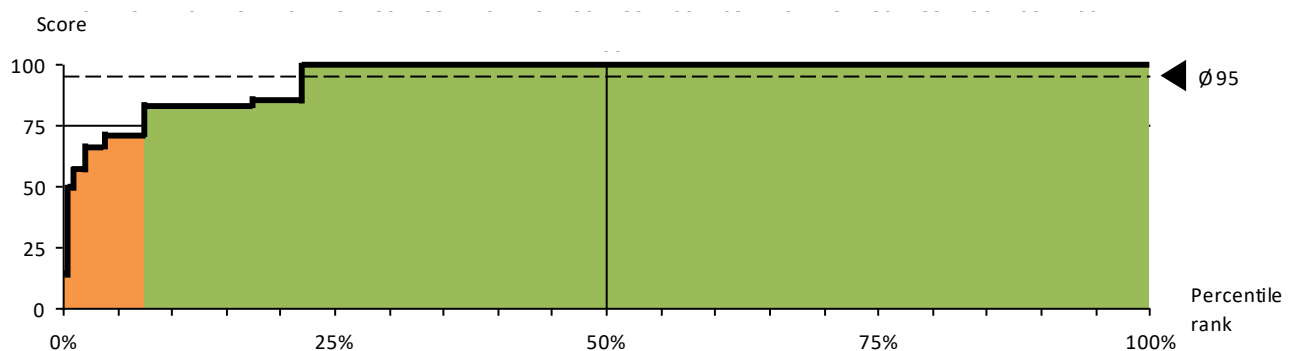
**Figure 5: SEC compliance results of Form SD-only filers**



**Figure 6: Form SD-only filer SEC compliance scores, histogram**



**Figure 7: Form SD-only filer SEC compliance scores, percentile rank**



**b. Chemical compound exclusion (five criteria)**

Not included in the Form SD-only filer scores was one (1) Form SD-only filer which reported it was excluded from the reporting obligations due to its particular chemical compound application per the SEC clarification,<sup>73</sup> but ostensibly out of an abundance of caution filed a Form SD anyhow.<sup>74</sup>

**c. Form SD & CMR filers (fifteen criteria)**

The 911 Form SD & CMR filers were evaluated based on the SEC Rule-derived 15-point compliance criteria (see Figure 8).<sup>75</sup>

The largest compliance obstacle remains the disclosure of SOR facilities and COO data, which, as seen in Table 4, has remained essentially unchanged compared with the previous reporting year. Indicator 9 (due diligence defined as the 5 OECD steps), however, improved by 8 percentage points over the previous period.

<sup>73</sup> See letter from Keller and Heckman documenting their communication with the SEC, posted on the SEC website: <https://www.sec.gov/comments/s7-40-10/s74010-596.pdf>

<sup>74</sup> See INTERTAPE POLYMER GROUP INC’s Form SD: <https://www.sec.gov/Archives/edgar/data/880224/000119312517141142/d384161dsd.htm>

<sup>75</sup> For the full indicators and an explanatory note, please consult Appendix B, Section 1, c. Form SD & CMR filers.

Figure 8: SEC compliance results of Form SD & CMR filers

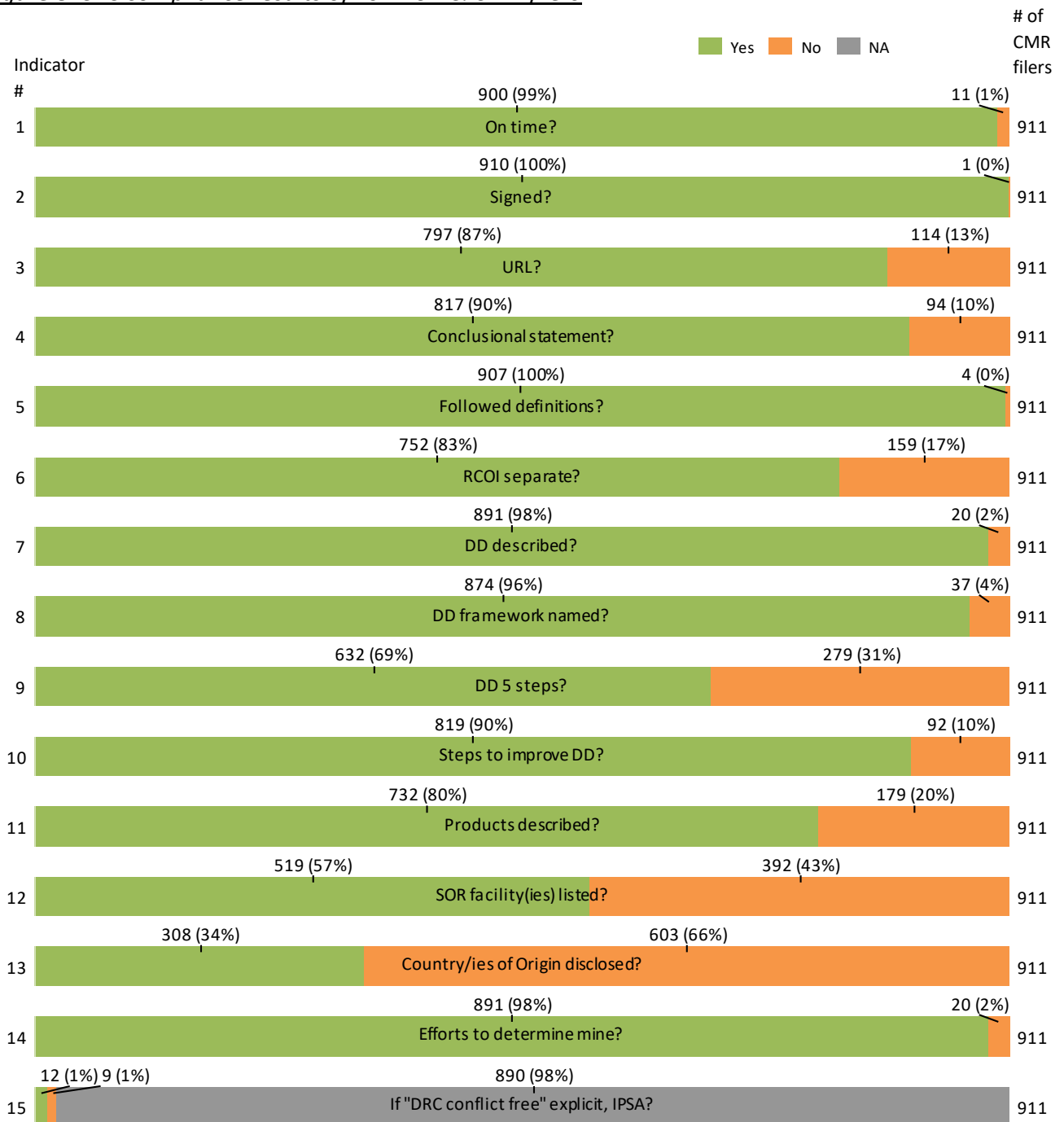


Table 4: Degree of SOR and COO non-disclosure

CMR filers that did <b>not</b> :	RY 2014	RY 2015	RY 2016
report what SORs were used to process their necessary conflict minerals	58%	43%	43%
Report COO of their necessary conflict minerals	67%	65%	66%



Regarding Indicator 15 (IPSA), as per the SEC Statement of April 29, 2014, companies were not required to obtain an IPSA on their necessary products unless they opted to use the explicit "DRC Conflict Free" determination after exercising due diligence.<sup>76</sup>

Sixteen (16) companies commissioned an IPSA for RY2016 (see Table 5). Altogether, ten (10) Attestations (ATs) and six (6) Performance Audits (PAs) were performed.<sup>77</sup> Four (4) of the sixteen (Canon, The Eastern Company, Seagate, and Philips) had an IPSA performed although they did not explicitly classify any product(s) as "DRC Conflict Free."

Table 5: IPSAs RY2015 vs. RY2016

Company	IPSA filed for RY2015?	IPSA filed for RY2016?	AT vs. PA	RY2016 Auditor
Advanced Semiconductor Engineering, Inc.	Yes	Yes	AT	KPMG
Arrow Electronics, Inc.	Yes	No		
AVX Corporation	Yes	Yes	PA	Elm
Canon Inc.	Yes	Yes	AT	KPMG
China Mobile Ltd.	Yes	Yes	AT	EY
Eastern Company (The)	Yes	Yes	AT	Fiondella
Halliburton Co.	Yes	No		
Himax Technologies	Yes	Yes	AT	KPMG
Intel	Yes	Yes	AT	EY
Kemet Corporation	Yes	Yes	PA	RCS*
Koninklijke Philips N.V (Philips)	Yes	Yes	AT	EY
M/A-COM Technology Solutions Holdings, Inc.	Yes	No		
Qorvo Inc.	No	Yes	PA	DHC
Seagate Technology	No	Yes	PA	Elm
Signet Jewelers Ltd.	Yes	Yes	PA	SGS
Siliconware Precision Industries Co., Inc.	Yes	Yes	AT	KPMG
Skyworks Solutions, Inc.	Yes	Yes	AT	KPMG
SMART Technologies, Inc.	Yes	NA**		
Smith & Nephew	Yes	Yes	PA	RCS
Strattec Security	Yes	No		
Texas Instruments Incorporated	Yes	Yes	AT	Crowe
<i>Total</i>	<i>19</i>	<i>16</i>	<i>10 ATs 6 PAs</i>	

\* Change from previous year.

\*\* Not applicable: Company was acquired in 2016 and is no longer subject to SEC filings.

<sup>76</sup> SEC, Statement on the Effect of the Recent Court of Appeals Decision on the Conflict Minerals Rule, Keith F. Higgins, SEC Division of Corporation Finance, April 29, 2014,

<https://www.sec.gov/News/PublicStmnt/Detail/PublicStmnt/1370541681994>

<sup>77</sup> While Tata Motors engaged PwC to conduct a "review" of their RCOI, as this is not an IPSA it is not included in this count.



Table 6: IPSAs vs. explicit "DRC Conflict Free" determination

#	IPSA for RY2016?	Issuer name	Was a "DRC conflict free" determination stated?	If "DRC conflict free" explicit, was IPSA filed as part of CMR?
1	yes	ADVANCED SEMICONDUCTOR ENGINEERING INC	yes	yes
2	yes	AVX CORP	yes	yes
3	yes	CANON	no	NA*
4	yes	CHINA MOBILE	yes	yes
5	yes	EASTERN COMPANY (THE)	no	NA*
6	no	ETHAN ALLEN INTERIORS INC	yes	no
7	no	FRANKLIN WIRELESS CORP	yes	no
8	yes	HIMAX TECHNOLOGIES INC	yes	yes
9	yes	INTEL CORP	yes	yes
10	yes	KEMET CORP	yes	yes
11	no	LIFELOC TECHNOLOGIES INC	yes	no
12	no	NETLIST INC	yes	no
13	no	NOBILITY HOMES INC	yes	no
14	no	ORION ENERGY SYSTEMS INC	yes	no
15	yes	KONINKLIJKE PHILIPS N.V. (PHILIPS)	no	NA*
16	yes	QORVO INC	yes	yes
17	yes	SEAGATE TECHNOLOGY	no	NA*
18	yes	SIGNET JEWELERS LTD	yes	yes
19	yes	SILICONWARE PRECISION INDUSTRIES CO LTD	yes	yes
20	yes	SKYWORKS SOLUTIONS INC	yes	yes
21	yes	SMITH NEPHEW PLC	yes	yes
22	no	STRATTEC SECURITY CORP	yes	no
23	no	SYNALLOY	yes	no
24	yes	TEXAS INSTRUMENTS	yes	yes
25	no	ZOOM TELEPHONICS INC	yes	no
<i>total</i>	16 = yes 9 = no		yes = 21 no = 4	yes = 12 NA* = 4 no = 9

\* NA = not applicable

For RY2016, there were twenty-one (21) companies that described one or more of their products containing 3TG as "DRC Conflict Free," thus explicitly invoking the determination (see Table 6). Nine (9) CMR filers stated a product containing 3TG was "DRC conflict free," but did not furnish the required IPSA. As these companies contravene the SEC Statement of April 29, 2014, they were each deducted a point for SEC indicator 15.

The scores of the SD & CMR filers are plotted onto a histogram (see Figure 9) and a percentile rank graph (see Figure 10). Nineteen percent (19%) of CMR filers had 100% compliance, and 79% were at or above the 75% compliance threshold. In all, CMR filers averaged a compliance score of 84%, an improvement of 5 percentage points over the previous reporting period. Nine percent (9.6%) of CMR filers did not attain an SEC compliance score of or above 75%.

Figure 9: Form SD & CMR filer SEC compliance scores, histogram

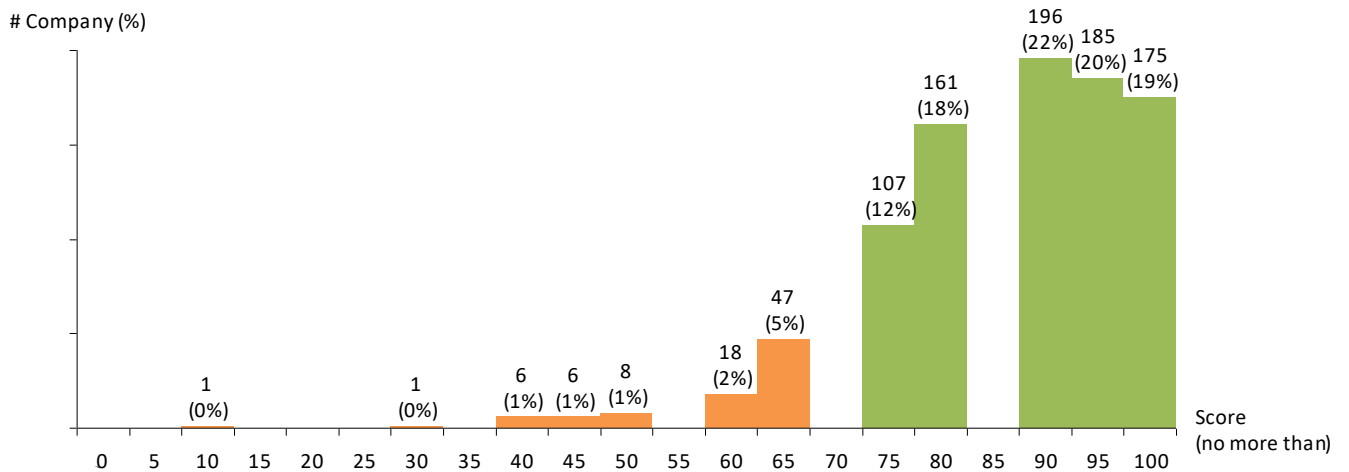
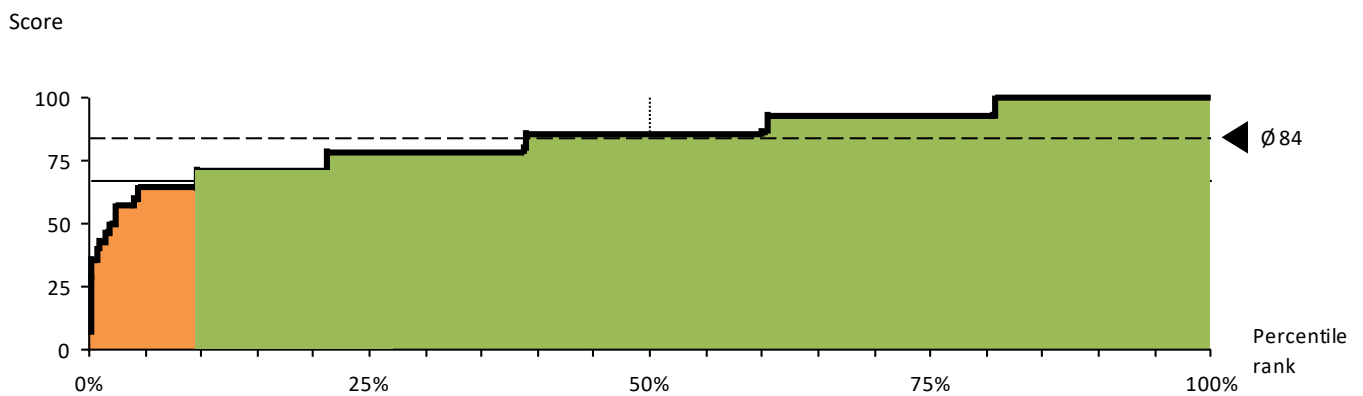


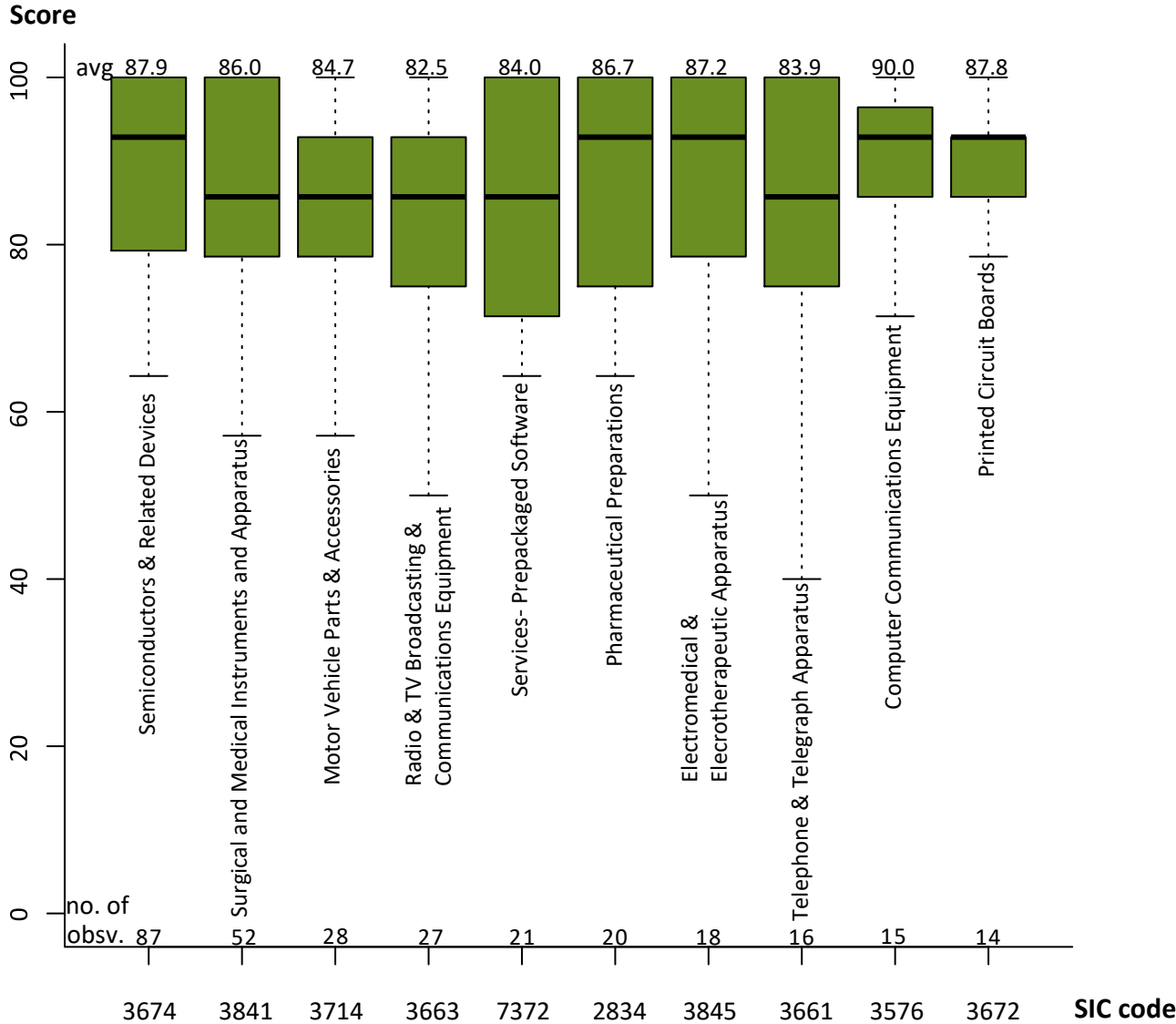
Figure 10: Form SD & CMR filer SEC compliance scores, percentile rank



Of additional interest is how the affected industries differed in their compliance with the SEC rule. The box plot<sup>78</sup> in *Figure 11* illustrates the compliance of the top 10 affected industries. A close race: the *Computer Communications Equipment* industry is again the winner this year, with an average compliance of 90%, followed by the *Semiconductors & Related Devices* industry at 87.9% and *Printed Circuit Boards* at 87.8%.

<sup>78</sup> A box plot graphically depicts groups of numerical data through their quartiles. The bottom and top of the box are the first and third quartiles, and the band inside the box is the second quartile (the median). The whiskers indicate variability outside the upper and lower quartiles.

Figure 11: SEC compliance score distribution of predominantly affected industries, all filers



2. Due diligence conclusions

Per the SEC Statement of April 29, 2014, issuers were not required to state a determination concerning the conflict status of their necessary 3TG.<sup>79</sup> Yet disclosing due diligence findings at the SOR and COO level was a requirement for RY2016. Eighty-eight percent (88%) of companies made a conclusional statement with regard to their due diligence process.

<sup>79</sup> SEC, Statement on the Effect of the Recent Court of Appeals Decision on the Conflict Minerals Rule, Keith F. Higgins, SEC Division of Corporation Finance, April 29, 2014, <https://www.sec.gov/News/PublicStmnt/Detail/PublicStmnt/1370541681994>



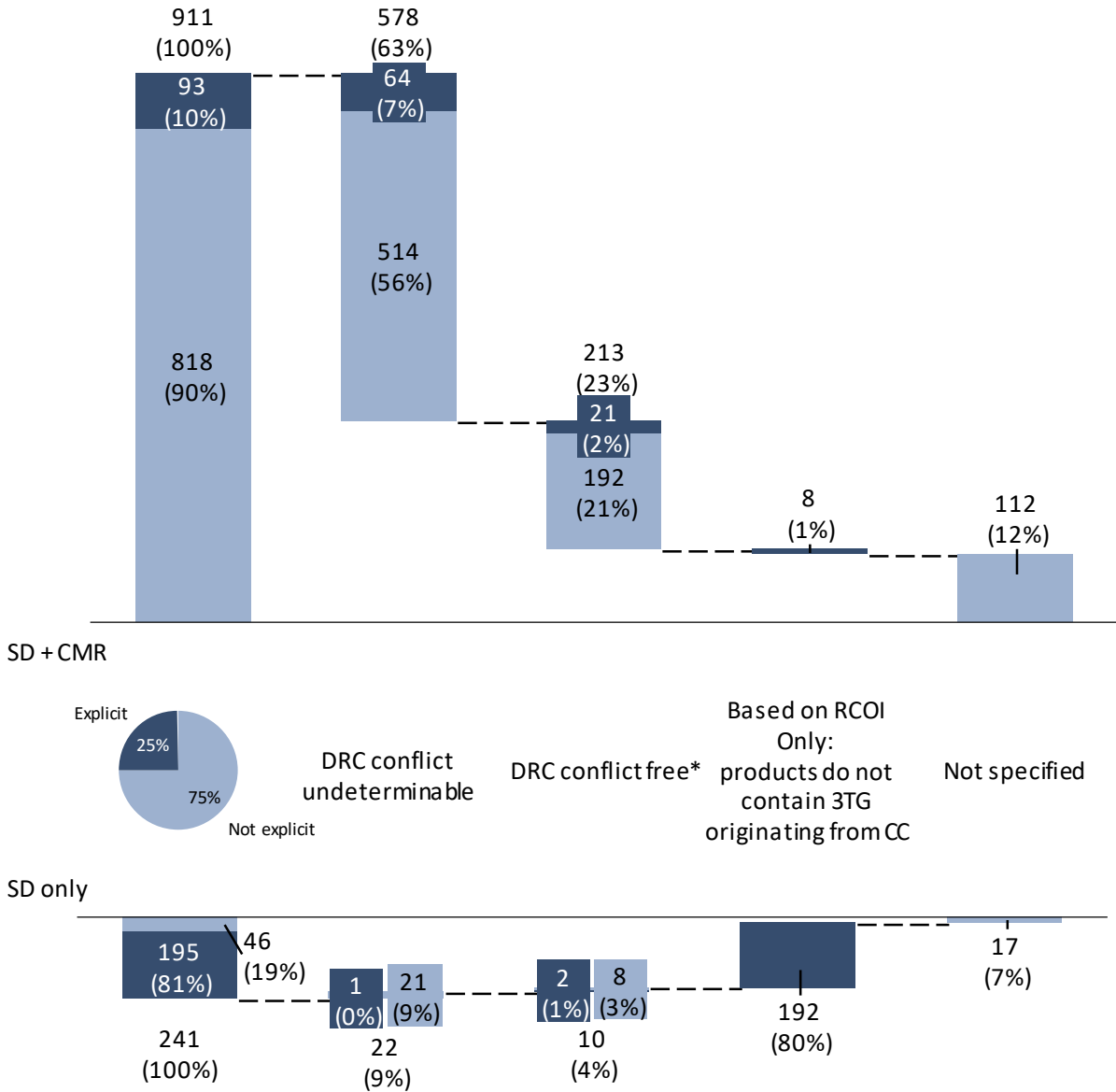


In all, we identified the following seven (7) conclusions and conclusion combinations made by both filer types for RY 2016:

- "DRC conflict undeterminable" explicit
- DRC conflict undeterminable -- implicit (without using the specific words)
- "DRC conflict free" explicit
- "DRC conflict free" and "DRC conflict undeterminable" explicit } Filer reported "DRC conflict free" (explicit) for one or more of its necessary products
- DRC conflict free and DRC conflict undeterminable -- implicit (without using the specific words)
- DRC conflict free -- implicit (without using the specific words)
- Based on RCOI only: products do not contain necessary 3TG originating from Covered Countries

More than half of CMR filers (63%) reported, either explicitly or implicitly, that their products were "DRC conflict undeterminable" (see Figure 12). Nineteen (19) companies that used the undeterminable conclusion stated something along the lines that they had "No reason to believe products contain conflict – their findings were inconclusive."

Figure 12: Due diligence conclusions



\* filer reported "DRC conflict free" (explicit) for one or more of its necessary products



The reasons that might lead a company to cite a *DRC conflict undeterminable* conclusion were varied. Five (5) reasons were cited by issuers – either explicitly or implicitly – for their choice of the *DRC conflict undeterminable* conclusion in RY2016:

- a. *Incomplete due diligence inquiry*
- b. *Uncooperative suppliers*
- c. *Questions as to the reliability of information provided by suppliers*
- d. *No requirement to report the conflict status of the necessary 3TG*
- e. *Not wishing to have IPSA performed*

Another reason why the *DRC conflict undeterminable* conclusion may be invoked is because issuers that have *necessary gold* have comparatively less RCOI data (recent introduction of RCOI requirement on the part of the LBMA) and fewer I3P audited gold refiners versus 3T smelters (see paragraph *Phase-in of LBMA’s RCOI reporting requirements* in section I. Context).

One hundred and ninety-three (193) companies, 21% of the CMR filers, implicitly stated that they were *DRC conflict free* compared to 100 companies, or 10%, reported for RY2015.<sup>80</sup> Suggesting a product was “*DRC conflict free*,” without undertaking an IPSA, was discouraged by SEC’s Division of Corporation Finance Director Keith Higgins on Sep. 15, 2014.<sup>81</sup> Other companies *hedged* their conclusional statement: while they implied that their products were “*DRC conflict free*,” they stated that they were not explicitly declaring their products as *DRC conflict free*.<sup>82</sup>

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<sup>80</sup> E.g. Steelcase’s [CMR](https://www.sec.gov/Archives/edgar/data/1050825/000105082517000111/a12-31x16cmr.htm): “none of the Necessary Conflict Minerals contained in the products we manufactured or contracted to be manufactured during the reporting period directly or indirectly financed or benefitted armed groups in the Covered Countries.” <https://www.sec.gov/Archives/edgar/data/1050825/000105082517000111/a12-31x16cmr.htm>

<sup>81</sup> Yin Wilczek, SEC Official Offers Three Pointers on Issuers’ Conflict Mineral Disclosures, BNA, Sept. 19, 2014. <http://www.bna.com/sec-official-offers-n17179895108/>

<sup>82</sup> See, e.g., language from:

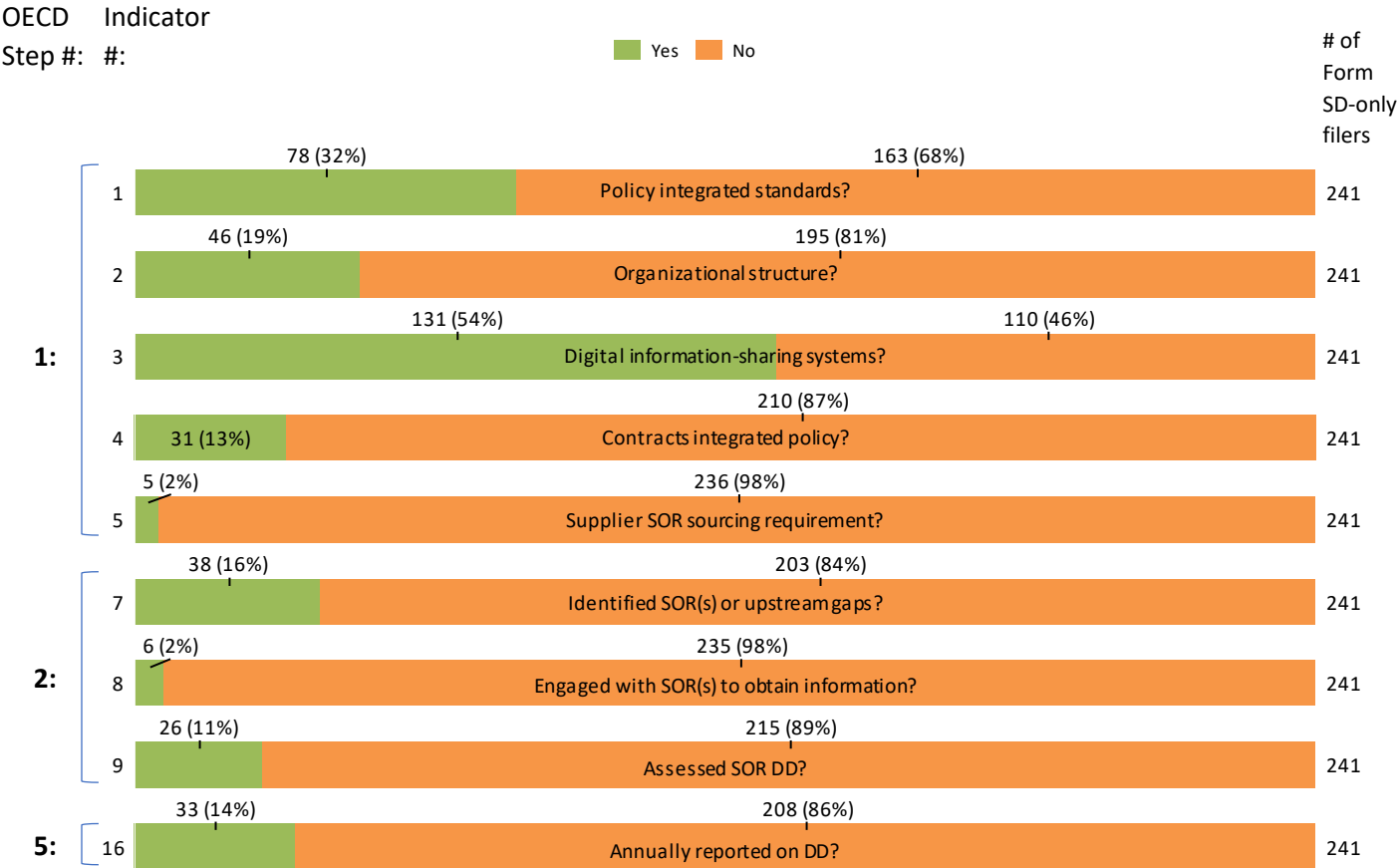
1. Chase’s [CMR](https://www.sec.gov/Archives/edgar/data/830524/000155837017004531/ex-1d01.htm): “Chase is not aware of any substantive evidence indicating that any Conflict Minerals which were utilized by Chase in the manufacture of Covered Products and which originated in the Covered Countries entered its supply chain in anyway other than through a certified Conflict Free Smelter (CFS), as identified on the internationally recognized Conflict-Free Smelter list ([www.conflictreesourcing.org](http://www.conflictreesourcing.org)). Furthermore, the Company is unaware of any evidence that any Conflict Minerals contained in products manufactured by it during the Covered Period have directly or indirectly financed or benefitted any armed groups in the Covered Countries...[however]... the Company has not voluntarily elected to describe any of its Covered Products as “*DRC conflict free*” and, as a result, has not obtained an IPSA.” <https://www.sec.gov/Archives/edgar/data/830524/000155837017004531/ex-1d01.htm>;
2. Becton, Dickinson and Company’s [CMR](https://www.sec.gov/Archives/edgar/data/10795/000119312517181884/d593187dex101.htm): “Based on our due diligence, none of the necessary 3TG contained in our in-scope products were determined by us to directly or indirectly finance or benefit armed groups in the Conflict Affected Region. However, we did not conclude that any of our products were “*DRC conflict free*.” <https://www.sec.gov/Archives/edgar/data/10795/000119312517181884/d593187dex101.htm>
3. UQM’s [CMR](https://www.sec.gov/Archives/edgar/data/315449/000155837017004429/ex-1d01.htm): “None of our in-scope products were determined by us to contain necessary 3TG that directly or indirectly financed or benefitted armed groups in the DRC Region. However, we did not conclude that any of our products covered by this Conflict Minerals Report were “*DRC conflict free*.” <https://www.sec.gov/Archives/edgar/data/315449/000155837017004429/ex-1d01.htm>

### 3. OECD conformance

#### a. Form SD-only filers (eight indicators)

A total of 241 Form SD-only filers were assessed against the OECD conformance indicators to see to what degree they were responsive to the OECD Guidance. *Figure 13* illustrates that among the three OECD Guidance due diligence steps applicable to Form SD-only filers, information pertinent to OECD Step 1 (Establish Strong Company Management Systems) was reported by many. More than half (54%) of these filers reported using extended, digital information-sharing systems upon which they relied.

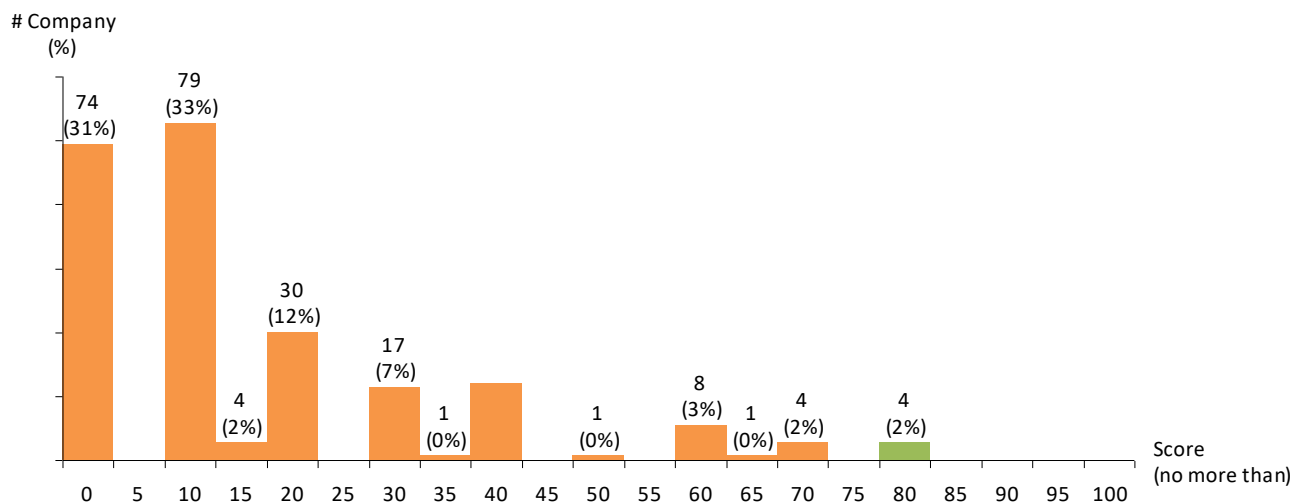
*Figure 13: OECD conformance results of Form SD-only filers*



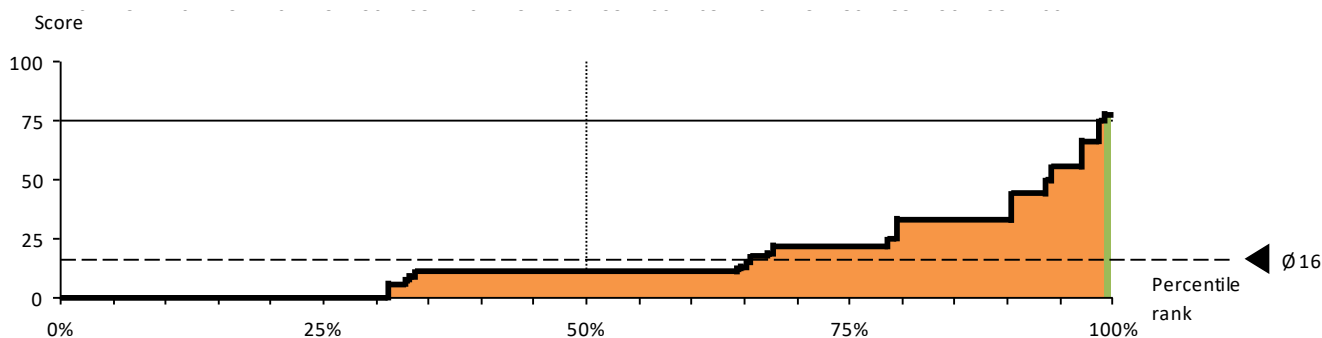
When their scores are plotted on a histogram, it is apparent how little their reports are aligned with the pertinent OECD Guidance steps (see *Figure 14*). As *Figure 15* depicts, the score average was 16%, the same average for RY2015. This non-alignment, however, may not be altogether surprising as Form SD-only filers are not required to conform to the OECD framework in spite of the overlap in RCOI and due diligence (DD) in the OECD Guidance.

Issuers earned a point for OECD Indicator 16, “Annually reported on DD,” only after earning points for at least one indicator in OECD step 1 and at least one indicator in OECD step 2.

**Figure 14: Form SD-only filer OECD conformance scores, histogram**



**Figure 15: Form SD-only filer OECD conformance scores, percentile rank**



**b. Form SD & CMR filers (eighteen indicators)**

An analysis of the 911 CMRs reveals that while some filers were in fact OECD Guidance-oriented this year, and reported such, others were not (see Figure 16). Overall, filers reported the most due diligence actions relevant to OECD Step 1. Reporting on digital information sharing systems notably increased to 96% in RY2016.

For RY2016, two (2) new OECD Guidance-based indicators were added. The first – Indicator #5: *Supplier SOR sourcing requirement* – inquired whether the issuer *requires* suppliers to source through SORs that have successfully undergone an independent third-party audit (CFSP, LBMA, RJC, etc.).<sup>83</sup> Issuers would fulfill this indicator when they made clear that their conflict minerals

<sup>83</sup> The OECD Guidance, on page 17, states: “A supply chain policy should be incorporated into contracts and/or agreements with suppliers.” With respect to their own risk management plans, the OECD Guidance (. 104) recommends that “downstream companies should: i) Build and/or exercise leverage over the refiners with red flags in their supply chain(s), who may be able to more effectively and directly mitigate the risks of contributing to conflict. Downstream companies may build leverage over refiners through the inclusion of due diligence performance into contracts (where applicable), or working through industry associations and multi-stakeholder initiatives”. Relevant here is whether an issuer’s supply chain policy takes into account the OECD Guidance by requiring, not just

policy establishes appropriate expectations for suppliers. There were various ways an issuer would make its relevant policy clear, e.g.:

- *suppliers may not include in any products sold to [issuer] that contains any tin, tantalum, tungsten, or gold mined that funded armed conflict.*
- *suppliers must use CFSI designated Conflict-Free Smelters as the source for any of the Conflict Minerals used in the products sold to [issuer].*

Twenty-seven (27) companies spelled out, in clear terms, such a practice (see Indicator #5 in Figure 16), while 138 companies did not go as far as requiring but still recommended that their suppliers source necessary products through SORs that were verified as DRC conflict free (see Figure 23).

The second new OECD based indicator added for RY2016 – Indicator #17: *SOR risks mitigated* – concerns the identification of SOR-level risks under Step 2, and an account of how those risks were mitigated (Step 3).<sup>84</sup> In order to assess this indicator, certain SORs known to be high-risk were cross-referenced with the SORs listed in the issuer’s CMDs. Specific SORs that met one of the following criteria were identified by our team as high-risk:

- (1) SORs in Covered Countries – but not RJC / LBMA / CFSI accredited;
- (2) SORs located in countries sanctioned by the U.S. government;
- (3) SORs affiliated with entities on OFAC’s SDN list.<sup>85</sup>

The existence of such high-risk SOR(s) in its supply chain, without an explanation of steps taken to manage such risk, lost this point – as the apparent red flag was either missed or the mitigation approach was not explained. In order to obtain this point, the issuer did not need to identify the specific SOR(s) in its supply chain as high-risk or blacklisted. However, in the disclosure it would have needed to be made clear that the issuer had indeed identified high-risk SORs in its supply chain, and that this cognizance was accompanied by a risk mitigation strategy that was enforced, and consequent action took place in 2016 – in accordance with the corresponding advice in the OECD Guidance. Here, 88 CMR filers (10%) earned this point, while the great majority did not.

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recommending, that its suppliers source through SORs that have successfully undergone an independent third party audit (CFSP, LBMA, RJC, etc.).

<sup>84</sup> Where refiners are “identified with red flag risks in their supply chain,” the OECD Guidance (pp 103-104) states:

“Downstream companies may manage risk by either

- i) continuing trade with the refiner throughout the course of measurable risk mitigation carried out by the refiner [...];
- ii) temporarily suspending trade with the refiner while the refiner is pursuing ongoing measurable risk mitigation; or
- iii) disengaging with a refiner in cases where mitigation appears not feasible or where the refiner has failed to respond to risks”.

In terms of reporting such risks, the OECD Guidance (p. 113) advises companies to: “disclose the actual or potential risks identified” under Step 2, and with regard to risk management: “Report on steps taken to implement Step 3. Included in such reporting, companies should describe the steps taken to manage risks, including a summary on the strategy for risk mitigation in the risk management plan”.

<sup>85</sup> The U.S. Treasury Department’s Office of Foreign Assets Control (OFAC) administers sanctions programs. The main problem in the eyes of the U.S. government is if an SDN entity is profiting from such transactions: “Unless otherwise authorized or exempt, transactions by U.S. persons, or in or involving the United States, are prohibited if they involve transferring, paying, exporting, withdrawing, or otherwise dealing in the property or interests in property of an entity or individual listed on the SDN List.”

See: U.S. Department of the Treasury, Sanctions Programs and Country Information, <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>



Figure 16: OECD conformance results Form SD & CMR filers

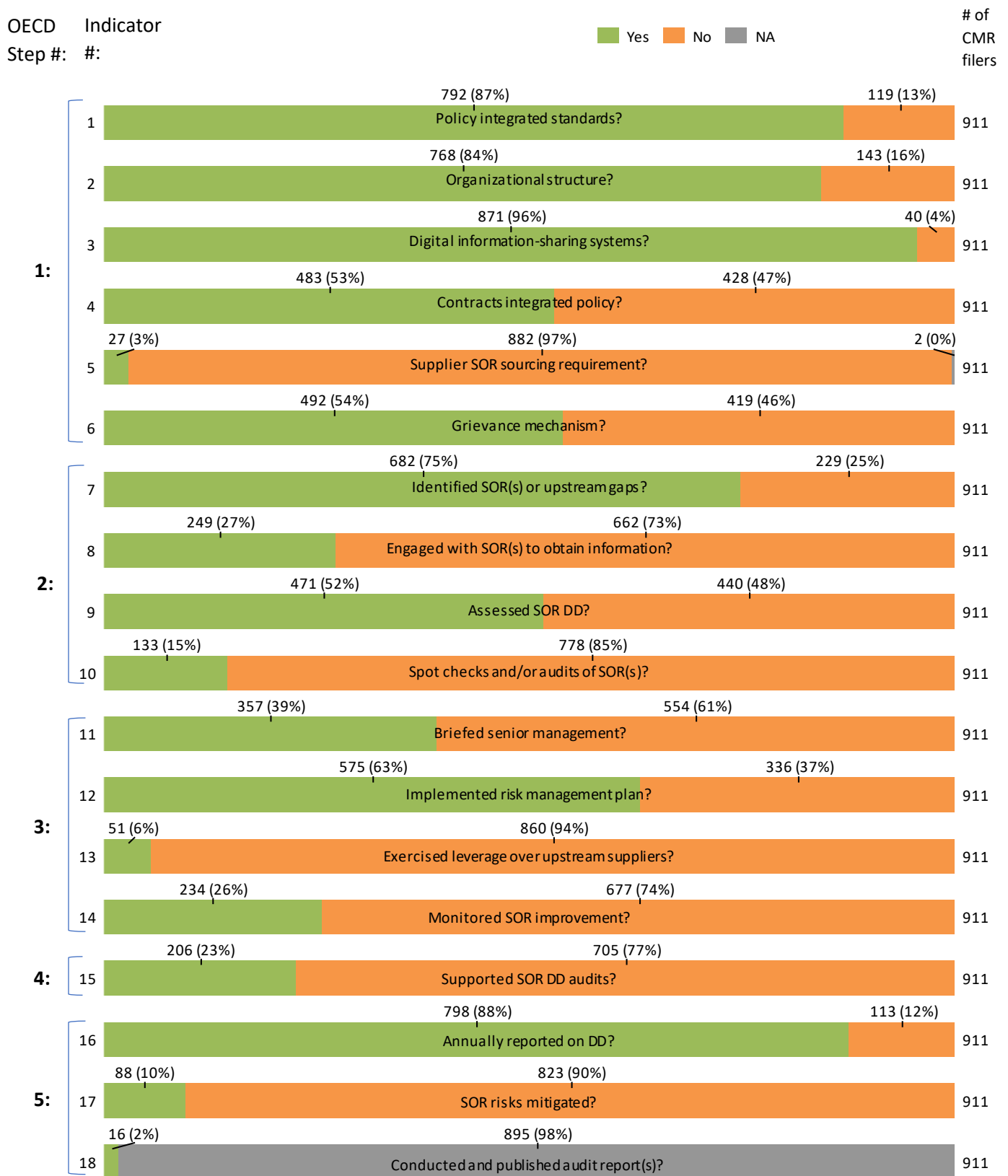
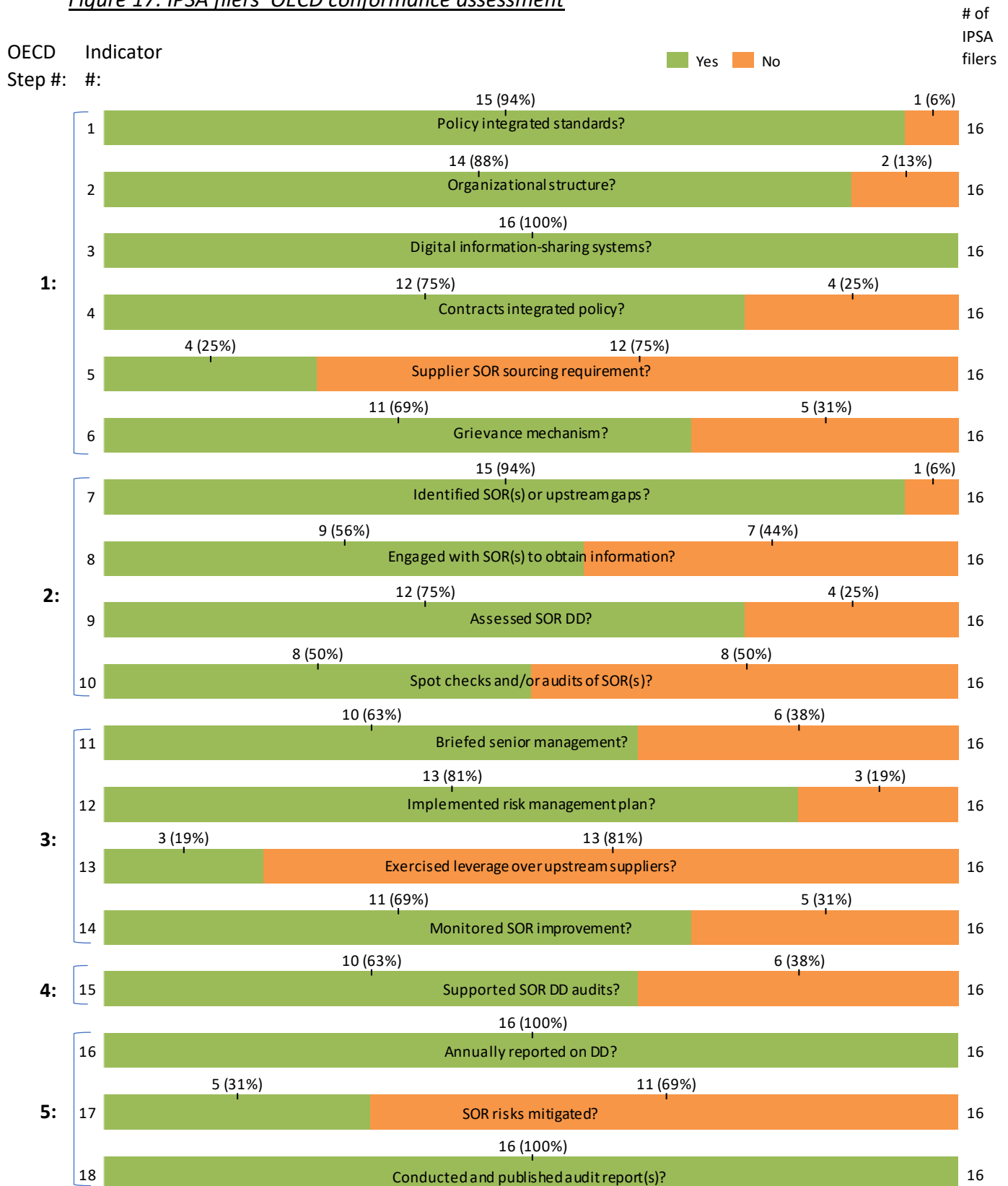


Figure 17: IPSA filers' OECD conformance assessment



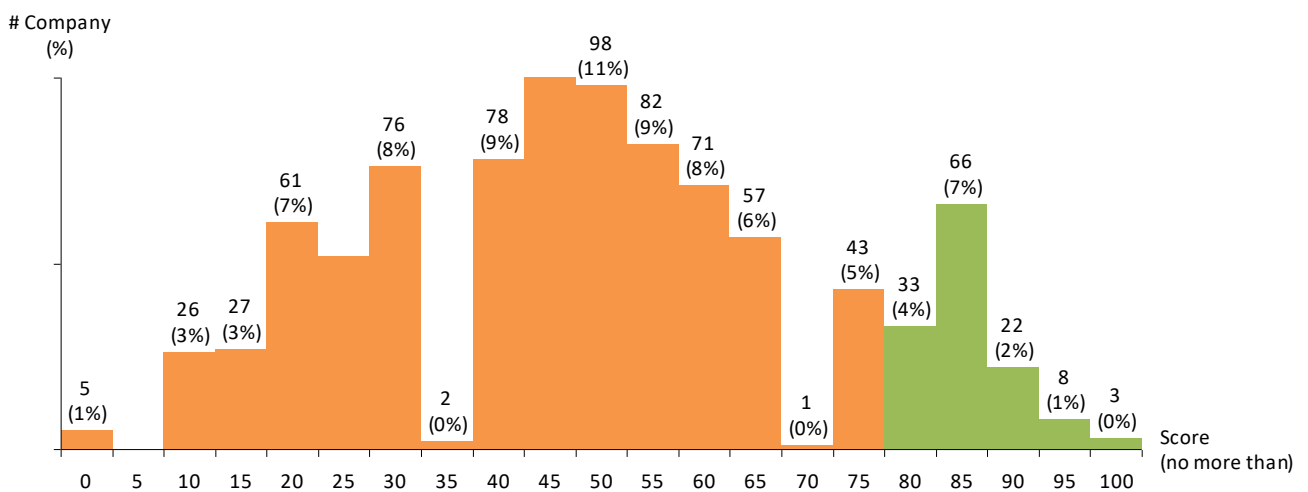
Filers that have an IPSA performed are audited on two points as per the SEC Rule:

- (1) whether the design of the Company’s due diligence framework as set forth in their CMR for the reporting period is in conformity, in all material respects, with the criteria set forth in the OECD Due Diligence Guidance;
- (2) whether the Company’s description of the due diligence measures it performed is consistent, in all material respects, with the due diligence process that the Company actually undertook.

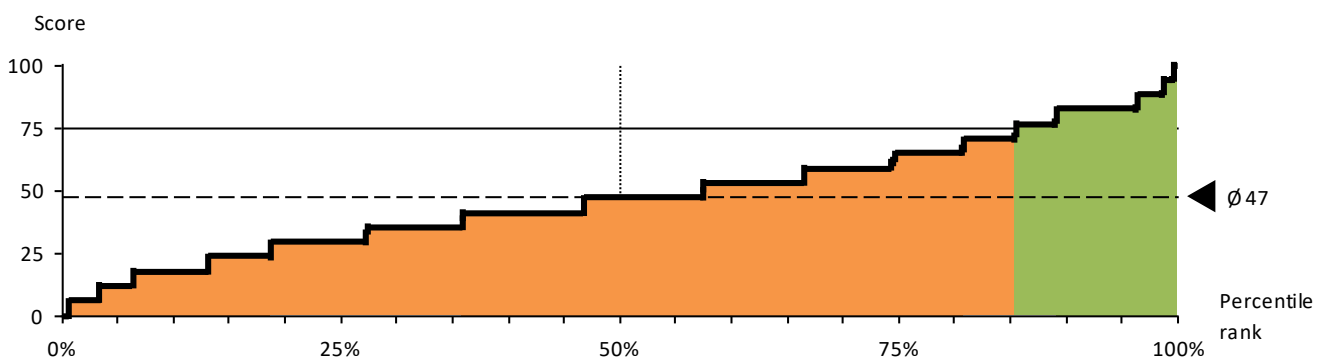
Issuers have significant discretion in writing their CMRs: depending on how they structure and describe their due diligence activities, some DD aspects may fall outside of the auditor’s mandate – and thus narrow the scope and cost of an IPSA. Therefore, the IPSA is not necessarily reflective of an issuer’s entire due diligence program or results. In spite of this latitude as to how their due diligence frameworks are designed and represented in the CMR, it is of interest to hone in on the 16 IPSA filers to see to what extent – all together – they align with the OECD framework. *Figure 17* depicts the OECD conformance indicators of the 16 companies that had an IPSA performed in RY2016, the analysis thereof related to the first of the two IPSA subjects.

*Figure 18* plots the scores of the CMR filers on a histogram. One hundred and thirty-two (132) CMR filers earned an OECD conformance score between 75% and 100%. The average OECD conformance score for Form SD & CMR filers was 47%, a 2-percentage point improvement vis-à-vis RY2015 (see *Figure 19*).

***Figure 18: Form SD & CMR filer OECD conformance scores, histogram***



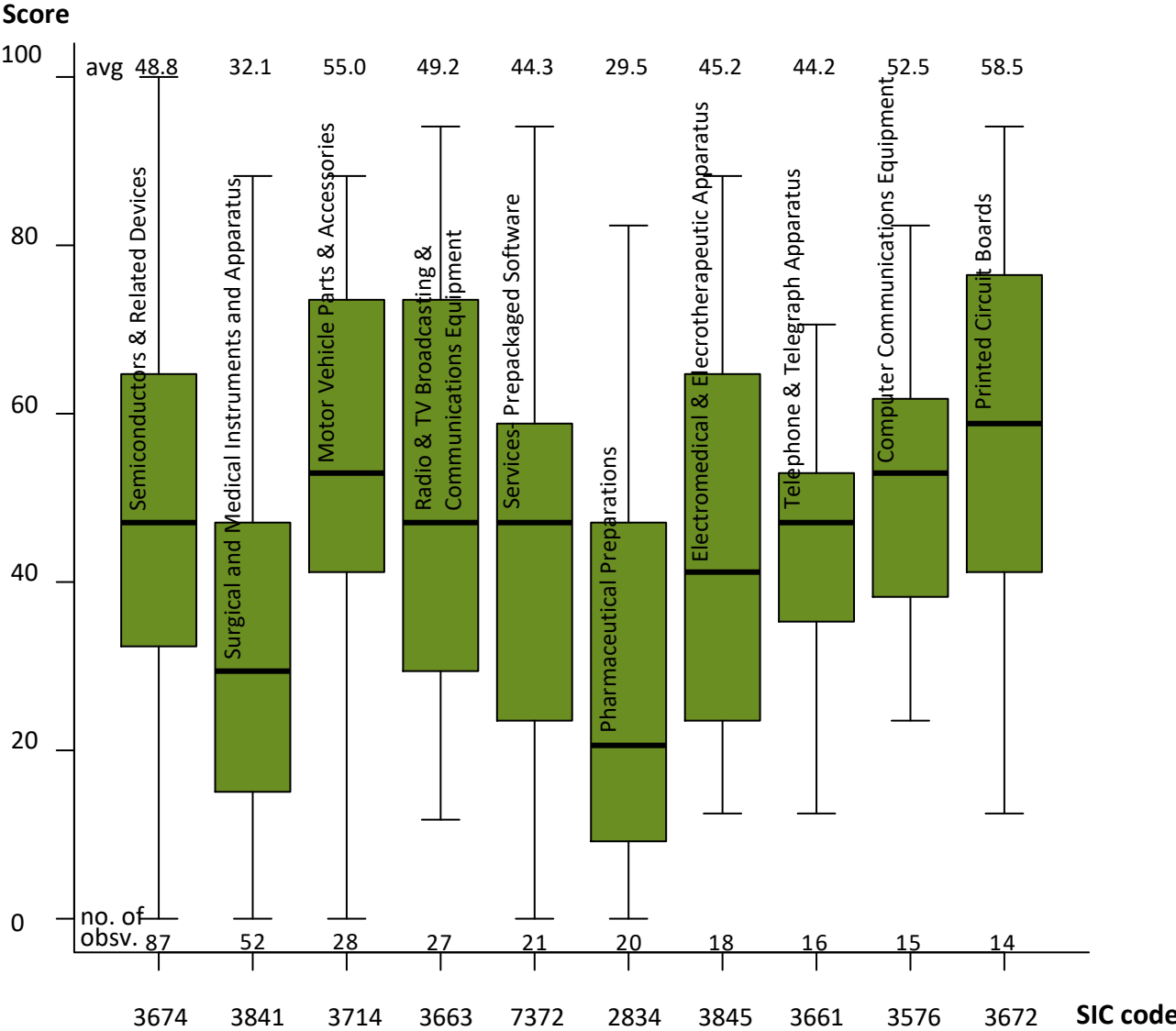
***Figure 19: Form SD & CMR filer OECD conformance scores, percentile rank***





The affected industries' performance vis-à-vis the OECD conformance indicators is displayed in *Figure 20*. Here the *Printed Circuit Boards* is in the lead with 58.5%, followed by the *Motor Vehicle Parts & Accessories* industry 55%.

*Figure 20: OECD conformance score distributions of predominantly affected industries, all filers*

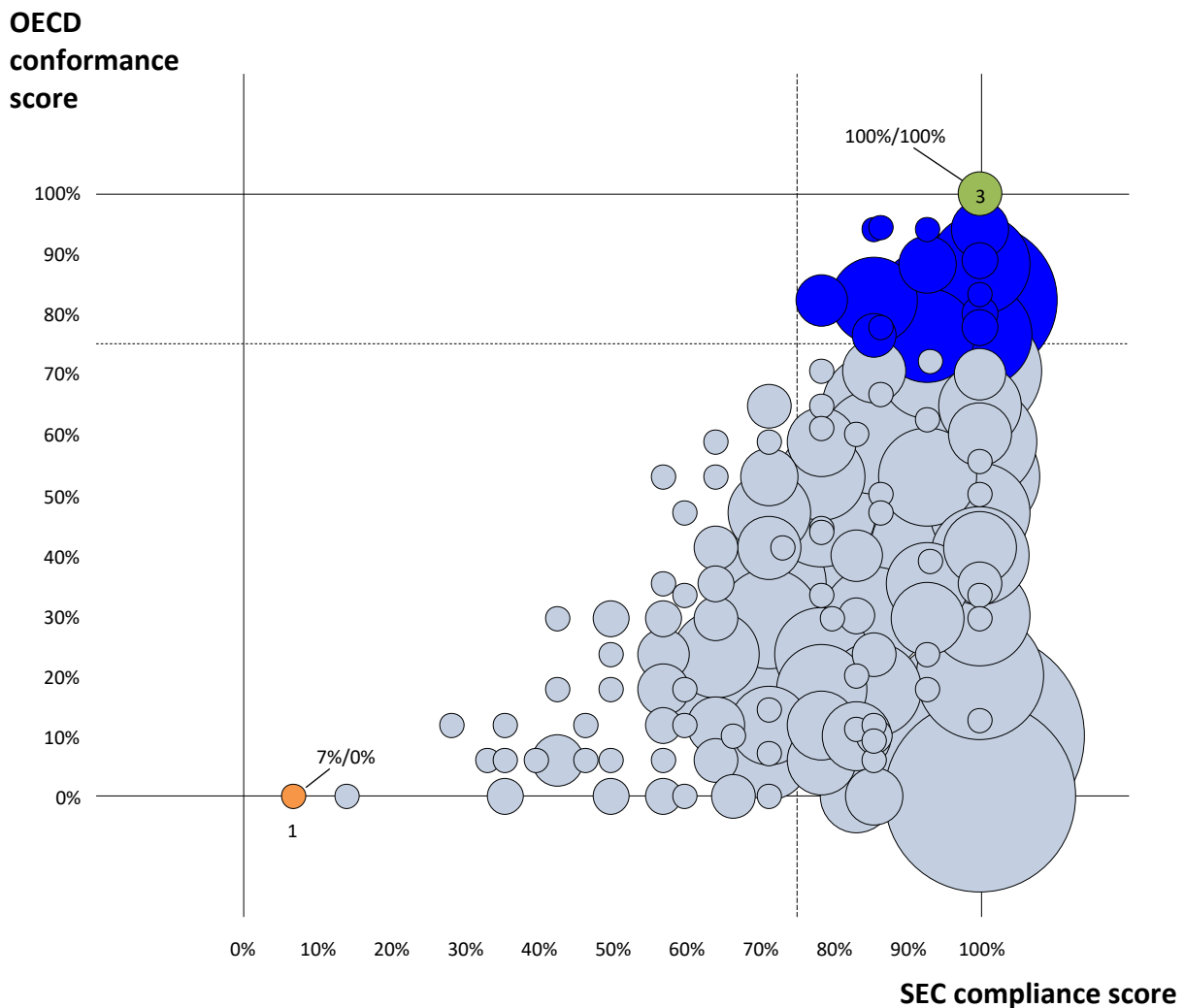


**4. SEC compliance vs. OECD conformance**

The bubble chart in *Figure 21* juxtaposes each filer's SEC compliance score against its OECD conformance score. It notably illustrates that there are many more companies that scored better on SEC compliance than on OECD conformance. Three (3) companies earned a 100% on both scores. Three hundred and thirteen (313) issuers – 20.4% of all Form SD & CMR filers – earned at least 75% on both scores combined (highlighted in blue in the top right corner of the chart), which represents an increase of 197 companies that made it into this cohort as compared to RY2015. Of these high scorers, 296 companies were CMR filers.



Figure 21: SEC compliance vs. OECD conformance bubble chart, both filer types



### 5. Additional indicators

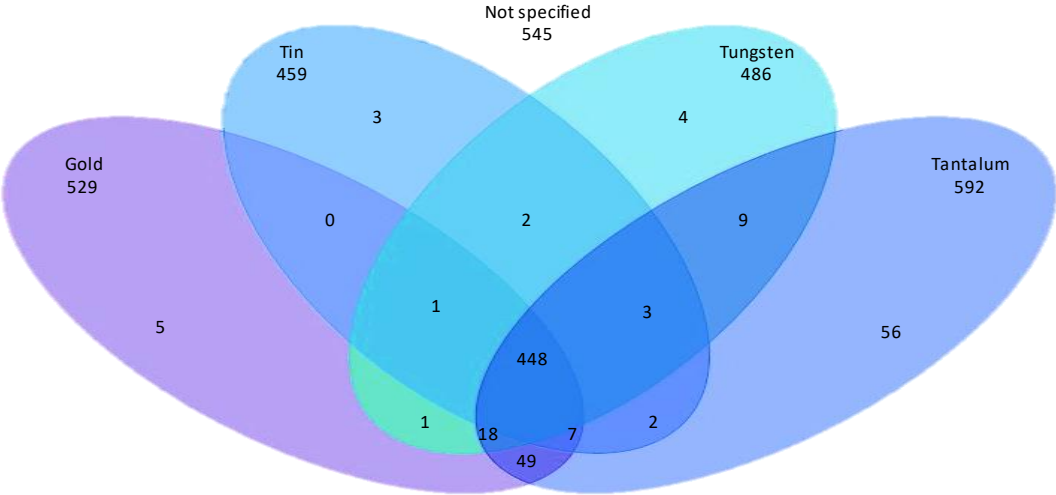
The Venn diagram in *Figure 22* indicates that the majority (448) of CMD filers (who mentioned their particular 3TG consumption – 608) state that all four 3TGs were used in their product portfolio.

Two years ago, our RY2014 study revealed that the Conflict Minerals Reporting Template (CMRT) had, in fact, become the de facto data exchange standard, with 82% of filers using the CFSI’s CMRT. Last year in RY2015, the average reported CMRT-based supplier survey response rate was 83% among issuers disclosing this data and for RY2016 the average grew an additional percentage point, to 84% (see *Table 7*). Notably, 180 companies reported a supplier response rate of 100% in RY2016 – which was also the mode (measure of central tendency).

Auditing of SORs saw considerable improvement from RY2015 to RY2016, in both number of companies reporting data and the % of audited SORs in supply chains (combined). The number of

companies reporting rose from 99 to 280, and the % of audited SORs (combined) rose from 61% to 82% over the period.

*Figure 22: necessary 3TG minerals in products*



*Table 7: # of suppliers, % of audited SORs, and supplier CMRT response rate*

<i>indicator</i>	<i>average</i>	<i>min</i>	<i>max</i>	<i>observations (n)</i>
Number of 3TG-relevant suppliers	484	1	12,333	384
% of audited SORs in supply chain combined	82%	0%	100%	280
% of audited SORs - tin	85%	0%	100%	59
% of audited SORs - tungsten	84%	0%	100%	43
% of audited SORs - tantalum	91%	0%	100%	41
% of audited SORs - gold	76%	0%	100%	47
Supplier CMRT response rate	84%	0%	100%	550

Some companies also discussed their procurement requirements: twenty-seven filers (3%) mentioned that they required – and 138 filers (12%) recommended – that their suppliers source necessary products through SORs that were I3P audited (see *Figure 23*).

Figure 23: Sourcing requirements – all filers



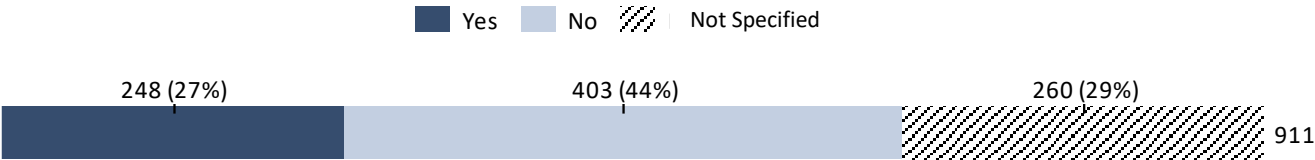
Many filers also reported that they were a member of an audit or verification scheme. Issuers claimed membership in the following four organizations; by far the largest membership in such a scheme reported was with the CFSI (see Table 8).

Table 8: Membership in audit or verification scheme

initiative	# of issuers reporting membership
Conflict Free Sourcing Initiative (CFSI)	219
ITRI Tin Supply Chain Initiative (iTSCi)	4
London Bullion Market Association (LBMA)	1
Responsible Jewellery Council (RJC)	1

As depicted in Figure 24, more than a fourth of issuers (27%) reported having a supplier CMRT response rate >90% of either total in-scope suppliers or total spend on in-scope suppliers.<sup>86</sup>

Figure 24: Supplier CMRT response rate >90%? – CMR filers

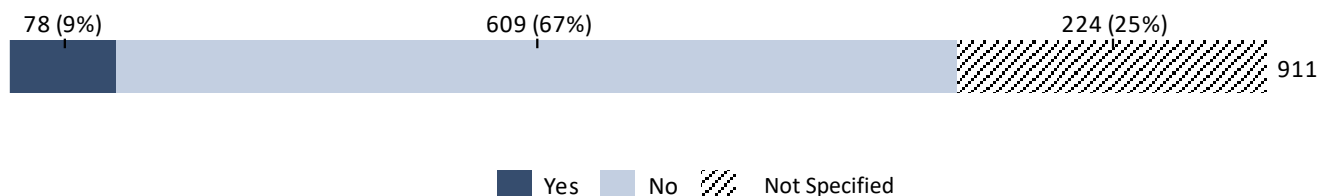


78 (9%) of all issuers reported having more than 90% of SORs in their 3TG supply chain that underwent independent 3rd party audits, as Figure 25 reveals.<sup>87</sup>

<sup>86</sup> The OECD Guidance (p. 103) states: “Companies that have been unable to identify refiners in their supply chain(s) should devise a risk management plan that will enable them to demonstrate significant measurable improvement in doing so.” This indicator hones in on whether an issuer has improved its engagement with Tier 1 suppliers to such a degree that virtually all its suppliers have responded. Use of a reporting template other than the CMRT, but nevertheless with a response rate >90% of total in-scope suppliers or total spend, would also fulfill this indicator.

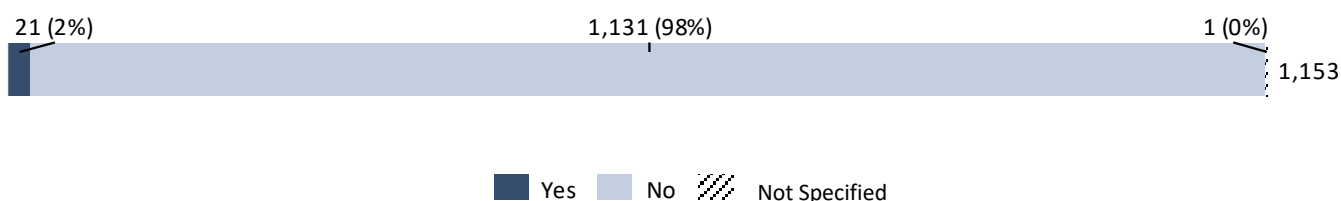
<sup>87</sup> Step 4 of the OECD Guidance (page 47) charges companies to “CARRY OUT INDEPENDENT THIRD-PARTY AUDIT OF SMELTER/REFINER’S DUE DILIGENCE PRACTICES.” The stated objective is “To carry out an independent third-party audit of the smelter/refiner’s due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas and contribute to the improvement of smelter/refiner and upstream due diligence practices, including through any institutionalised mechanism to be established at the industry’s initiative, supported by governments and in cooperation with relevant stakeholders. Specifically, on page 50: “For all downstream companies [...] i) It is recommended that all downstream companies participate and contribute through industry organisations or other suitable means to appoint auditors and define the terms of the audit in line with the standards and processes set out in this Guidance. Small and medium enterprises are encouraged to join or build partnerships with such industry organisations.” This indicator asks whether an issuer has ensured that the great majority of SORs in its supply chain carried out the key elements of due diligence through independent third party audits, e.g. through RJC / LBMA / CFSI

**Figure 25: Independent 3rd party audits of SORs in 3TG supply chain >90%? – CMR filers**



A concern to civil society stakeholders is that companies subject to Dodd-Frank Section 1502 would not – for whatever reason – seek to avoid sourcing 3TG from the covered countries, e.g. using supplier contracts to avoid 3TG from the GLR.<sup>88</sup> Figure 26 shows that 21 issuers did have a policy in place stipulating that they were intentionally avoiding DRC-sourced 3TG.

**Figure 26: Issuer is effectively boycotting CCs, all filers**



## 6. Trade law compliance

While outside the scope of the conflict minerals compliance requirements under the SEC, and in some cases also beyond the scope of the OECD Guidance and thus not taken into account in our scoring, U.S. trade law compliance does intersect with conflict minerals. The U.S. government maintains comprehensive trade embargos for example on North Korea and Sudan. Yet for RY2016, nine (9) companies did state that an SOR located in North Korea – Central Bank of the DPRK – as a possible SOR in their supply chains,<sup>89</sup> and 156 CMR filers listed Sudan (North) as a likely COO in their supply chains – compared to 180 in RY2015.

accreditation. The 90% threshold would comprise the average of 3<sup>rd</sup> party audits in 3TG supply chains, depending on which 4 3TG minerals are in the issuer’s supply chains.

<sup>88</sup> Some companies evidently ensure through contractual agreements that suppliers boycott the region, which goes against the OECD Guidance and also threatens the livelihoods of miners in Congo. See, e.g. the [Form SD](#) of THE ESTÉE LAUDER COMPANIES INC: “In addition, the Company provided written notice to any direct supplier of materials to the Company that such materials shall not contain conflict minerals from the Covered Countries, and the Company requested and received written acknowledgment of such notice in connection with the Subject Products.” [https://www.sec.gov/Archives/edgar/data/1001250/000110465917036282/a17-14025\\_1sd.htm](https://www.sec.gov/Archives/edgar/data/1001250/000110465917036282/a17-14025_1sd.htm)

<sup>89</sup> See e.g. Everi Holdings, Ltd, <https://www.sec.gov/Archives/edgar/data/1318568/000155837017004552/ex-1d01.htm>, and MKS Instruments, Inc., <https://www.sec.gov/Archives/edgar/data/1049502/000119312517187151/d387878dex101.htm>

A related issue is how filers are ensuring that none of their business interests intersect with the Specially Designated Nationals and Blocked Persons List (SDN List).<sup>90</sup> Two hundred and fifty-seven (257) filers disclosed for RY2016 that they had – or likely had – gold in their necessary products that was refined by Fidelity Printers Ltd. in Zimbabwe (compared with 244 in RY2015).<sup>91</sup>

Fidelity Printers Ltd. and Central Bank of the DPR of Korea aside, CMR filers listed several other high-risk SORs as likely in their supply chains in RY2016.<sup>92</sup>

These findings highlight the reality that due diligence is a more encompassing undertaking than just conflict minerals, and that due diligence systems – if run in parallel – need to at least communicate.

*7. Implausible Countries of Origin*

In pursuit of due diligence, one of the initial steps in screening supply chain data is COO plausibility (e.g.: are countries with no mines listed as 3TG COO?). Based on the most recent USGS Mineral Yearbooks, implausible COO countries include:

<ul style="list-style-type: none"> <li>• Belarus</li> <li>• Belgium</li> <li>• Bermuda</li> <li>• France</li> </ul>	<ul style="list-style-type: none"> <li>• Hong Kong</li> <li>• Hungary</li> <li>• Israel</li> <li>• Italy</li> </ul>	<ul style="list-style-type: none"> <li>• Luxembourg</li> <li>• Netherlands</li> <li>• Singapore</li> <li>• UAE/United Arab Emirates</li> </ul>
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There are no known deposits of cassiterite, columbite-tantalite, wolframite, or gold deposits on the island-cities of Hong Kong and Singapore? Nevertheless, 113 CMR filers reported one or more of these countries as likely COOs in their supply chains. These 113 CMR filers run the risk of failing the *basic plausibility test* posed by the SEC’s requirement that issuers list all COOs for products which have not been found to be “DRC Conflict Free.”<sup>93</sup>

<sup>90</sup> U.S. Department of the Treasury, Sanctions Programs and Country Information, <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>

<sup>91</sup> Fidelity Printers Ltd., a subsidiary of the Reserve Bank of Zimbabwe, implements a gold buying program funded by Sino-Zim Development Private Limited in which it purchases gold from local miners, based on a Memorandum of Understanding which was signed back in 2009. “The Reserve Bank of Zimbabwe and Sino-Zim Development Private Limited, a company formed under a Memorandum of Understanding (MoU) with the Chinese Government, have launched a 500 million USD gold buying programme.” See: Nam News Network. Zimbabwe's Central Bank Launches 500m USD Gold Buying Programme, Nov 30, 2009, <http://www.namnewsnetwork.org/v3/read.php?id=MTAyOTIz> However, the Sino Zimbabwe Development (Pvt) Ltd was sanctioned on 14 April 2014 by the U.S. Department of the Treasury’s Officer of Foreign Assets Control (OFAC). See OFAC’s listing of Sino Zimbabwe Development (Pvt) Ltd here: <https://sanctionssearch.ofac.treas.gov/Details.aspx?id=4136>

<sup>92</sup> The presence of these high-risk SORs in the CMRs of hundreds of companies is due, in part, to certain suppliers responding to the CMRT at a company or division level, which results in some companies reporting that their supply chains contain more than 95% of all known global SORs. See, e.g., Agilent Technologies’s CMR: [https://www.sec.gov/Archives/edgar/data/1090872/000156459017011821/a-ex101\\_15.htm](https://www.sec.gov/Archives/edgar/data/1090872/000156459017011821/a-ex101_15.htm)

<sup>93</sup> Page 56363 of the Federal Register Publication



## Appendices

### Appendix A: Acronyms

3TG	Tin, Tungsten, Tantalum, and Gold
3T	Tin, Tungsten and Tantalum
AIA	Aeronautics Industry Association
AFP	Analytical Fingerprint
ASM	Artisanal and Small-Scale Mining
AT	Attestation
BGR	Bundesanstalt für Geowissenschaften und Rohstoffe
BSP	Better Sourcing Program
CC	Covered Countries: Democratic Republic of the Congo (DRC), Central Africa Republic, South Sudan, Zambia, Angola, The Republic of the Congo, Tanzania, Burundi, Rwanda, Uganda
CFSI	Conflict-Free Sourcing Initiative
CFSP	Conflict-Free Smelter Program
CIK	Central Index Key
CMD	Conflict Minerals Disclosure
CMP	Conflict Minerals Program
CMR	Conflict Minerals Report
CMRT	Conflict Minerals Reporting Template
COO	Country of Origin
DD	Due Diligence
DDG	Due Diligence Guidance (OECD)
DI	Development International
DMCC	Dubai Multi Commodities Centre
DPRK	Democratic People's Republic of Korea
DRC	Democratic Republic of the Congo
EDGAR	Electronic Data Gathering, Analysis, and Retrieval System
EICC	Electronic Industry Citizenship Coalition
EU	European Union
GeSI	Global e-Sustainability Initiative
GLR	Great Lakes Region (of Africa)
GoE	Group of Experts (UN)
I3P	Independent 3 <sup>rd</sup> Party
ICGLR	International Conference on the Great Lakes Region
IPSA	Independent Private Sector Audit
IPIS	International Peace Information Service
iTSCi	ITRI Tin Supply Chain Initiative
LBMA	London Bullion Market Association
NA	Not Applicable
NS	Not Specified
NAM	National Association of Manufacturers
OECD	Organisation for Economic Co-operation and Development
PA	Performance Audit
RCOI	Reasonable Country of Origin Inquiry

RGG	Responsible Gold Guidance
RJC	Responsible Jewellery Council
RY	Reporting Year
SEC	Securities and Exchange Commission
SD	Specialized Disclosure
SDN List	Specially Designated Nationals and Blocked Persons List
SIC	Standard Industrial Classification
SOR	Smelter or Refiner
TI-CMC	Tungsten Industry Conflict Minerals Council
UN	United Nations
VP	Vice President
WFCL	Worst Forms of Child Labor

## Appendix B: Indicators

Changes to RY2015 indicators and explanations are highlighted in yellow.

### Section 1: SEC-based Compliance Indicators

The SEC-based compliance indicators for RY2016 are identical to those applied in RY2015. These criteria are premised on DI's interpretation of the particular legislative intent of Section 1502 and of the SEC Rule, as well as other subsequent SEC statements and communication, and are backed up by stakeholder input.

#### a. Regular Form SD-only filers (seven criteria)

Criterion #	Indicator	Note	Possible answers
1	Filed on time?	The deadline is on or before May 31 <sup>st</sup> , 2017 for RY 2016. Specifically, we take the "Date Filed" data as shown on EDGAR to determine if a firm filed on time or not. For firms that uploaded their files on June 1, 2016 (18 firms in total), we additionally checked the issuance date stated in their Form SD. If the date is May 31 or before, we chalked it up to a technical delay and granted a "yes" for the question "Filed on time?".	Yes/No
2	Signed by Executive Officer?	The SEC defines an executive officer as follows: "The term 'executive officer,' when used with reference to a registrant, means its president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant." <sup>94</sup>	Yes/No
3	URL to Form SD provided and working?	A URL in the Conflict Minerals Disclosure (CMD) to the very CMD on the company website was required by the Rule. Three aspects would need to be considered: (1.) The link in the EDGAR-hosted CMD points to the CMD on the company's website. If the link directly leads the viewer to the	Yes/No

<sup>94</sup> Code of Federal Regulations, Title 17, Chapter II (4-1-09 Edition) § 240.3b-7, Commodity and Securities Exchanges, PT. 240-End, Revised as of April 1, 2009.





		<p>CMD, or we found the CMD in a matter of a few clicks without much searching, a point was awarded.</p> <p>(2.) If location instructions are provided, they <b>are working</b>. If instructions on how to find the link were provided in the EDGAR-hosted CMD, <b>but the link is not working</b>, no point was awarded.</p> <p>(3.) The company has a copy of their own disclosure on their website, and the link(s) does not simply point back to EDGAR.</p>	
4	Conclusional statement provided?	For the Form SD-only filers, the issuer's conclusion should state or contain language that makes clear that, based on the issuer's RCOI analysis, the conflict minerals in its necessary products do not contain 3TG originating from the Covered Countries.	Yes/No
5	No deviation from SEC definitions?	For the sake of clarity, if filers noticeably deviated from the definitions of terms as provided in the SEC Rule (e.g. on page 56364), one point was deducted.	Yes/No
6	RCOI undertaken to reach conclusional statement described?	As per the SEC's instructions, affected companies are to disclose the RCOI determination "and briefly describe the reasonable country of origin inquiry it undertook in making its determination and the results of the inquiry it performed." This indicator is of continued relevance as in light of possibilities such as mergers and acquisitions, new suppliers and new supply chains, new products, etc. According to the SEC Rule (page 56316): "In addition, it is expected that reasonable country of origin inquiry processes will change over time based both on improved supply chain visibility and the results of an issuer's prior year inquiry."	Yes/No
7	If issuer had "reason to believe" RCOI yields a 3TG origin possibly from Covered Countries, Due Diligence described?	In the event that an issuer's RCOI yielded reason for belief that its necessary conflict minerals may have originated in the Covered Countries, but the subsequent due diligence found that the 3TG in its necessary products did not, in fact, originate in the Covered Countries, its Form SD would need to describe that due diligence.	Yes/No/ NA

#### **b. Form SD-only filers reporting chemical compound exclusion (five criteria)**

The same first 4 criteria of *a. Regular Form SD-only filers* above apply. With regard to the *Conclusional statement* (the 5<sup>th</sup> criteria for this filer type), such filers would state something along these lines: *Based on SEC guidance regarding the applicability of the Conflict Minerals Rule to chemical compounds, we do not believe that our necessary product(s) contain(s) a "Conflict Mineral."*

#### **c. Form SD & CMR filers (fifteen criteria)**

<i>Criterion #</i>	<i>Indicator</i>	<i>Note</i>	<i>Possible answers</i>
1	Filed on time?	On or before May 31 <sup>st</sup> , 2017 for RY 2016.	Yes/No
2	Signed by Executive Officer?	The SEC defines an executive officer as follows: "The term 'executive officer,' when used with reference to a registrant, means its president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant." <sup>95</sup>	Yes/No
3	URL to Form SD provided and working?	A URL in the Conflict Mineral Disclosure (CMD) to the very CMD on the company website was required by the Rule. The rule states e.g. that "the registrant must disclose this information on its publicly available	Yes/No

<sup>95</sup> Ibid.

		<p>Internet website and, under a separate heading in its specialized disclosure report entitled “Conflict Minerals Disclosure,” provide a link to that website.”</p> <p>Four points would need to be considered:</p> <ol style="list-style-type: none"> <li>(1.) The link in the EDGAR-hosted CMD points to the CMD on the company’s website. If the link directly leads the viewer to the CMD, or if we found the CMD in a matter of a few clicks without much searching, a point was awarded.</li> <li>(2.) The link points both to the Form SD and the CMR (if a CMR filer). A CMR filer would also need to provide the link to the Form SD, as technically speaking the CMR is an Exhibit of the Form SD.</li> <li>(3.) If location instructions are provided, they are not false. If an issuer provided instructions on how to find the link in the EDGAR-hosted CMD, but those instructions proved false, no point was awarded.</li> <li>(4.) The company has a copy of their own disclosure on their website, and the link(s) do(es) not simply point back to EDGAR.</li> </ol>	
4	Conclusional statement provided?	<p>To date, the affected issuers are not required to use the explicit determination labels concerning the conflict status of their necessary 3TG. In <i>National Association of Manufacturers v. SEC</i>, the panel majority concluded on August 18, 2015, that requiring “regulated entities to report to the Commission and to state on their website that any of their products have ‘not been found to be ‘DRC conflict free’” was “a metaphor [to] convey moral responsibility for the Congo war” and indeed violated the First Amendment.<sup>96</sup></p> <p>However, all other aspects of the SEC Rule were upheld. The SEC’s Division of Corporate Finance-issued guidance of April 29, 2014 stated: “If the company has products that fall within the scope of Items 1.01(c)(2) or 1.01(c)(2)(i) of Form SD, it would not have to identify the products as “DRC conflict undeterminable” or “not found to be ‘DRC conflict free,’” but should disclose, for those products, the facilities used to produce the conflict minerals, the country of origin of the minerals and the efforts to determine the mine or location of origin.”<sup>97</sup></p> <p>Consequently, our operationalization of the SEC Rule &amp; Statement for RY2016 disclosures, notably in the form of disclosure compliance criteria, is as follows: although filers were not required to use the explicit determination labels, this did not absolve a company from complying with the basic disclosure requirement of answering the basic questions concerning origin, facilities of production of origin, and pertinent due diligence efforts also on upstream tiers.</p> <p>In sum, the current status of the Rule does not absolve an issuer to report on due diligence findings of the entirety of its 3TG supply chain(s). Last but not least, an issuer would still need to disclose</p>	Yes/No

<sup>96</sup> United States Court of Appeals For The District of Columbia Circuit, *NAM, et al., Appellants, v. SEC.*, USCA Case #13-5252, August 18, 2015. <http://freespeechforpeople.org/cms/assets/uploads/2015/08/NAM-v-SEC-opn-8-18-2015.pdf>

<sup>97</sup> SEC, Statement on the Effect of the Recent Court of Appeals Decision on the Conflict Minerals Rule, April 29, 2014. <http://www.sec.gov/News/PublicStmnt/Detail/PublicStmnt/1370541681994>



		information concerning its particular case and 3TG origin findings (e.g. whether or not it sources 3TG from the covered countries) in order to demonstrate compliance with the disclosure logic of the SEC Rule.	
5	No deviation from SEC definitions?	For the sake of clarity, if filers noticeably deviated from the definitions of terms as provided in the SEC Rule (e.g. on page 56364), this point was deducted.	Yes/No
6	RCOI steps described, and described separately from due diligence?	According to the SEC Rule, RCOI is a distinct step separate from the due diligence process, reiterated once more in question (18) of the SEC's FAQ. <sup>98</sup> In light of possibilities such as mergers and acquisitions, new suppliers and new supply chains, new products, etc., this indicator is of continued relevance. According to the SEC: "In addition, it is expected that reasonable country of origin inquiry processes will change over time based both on improved supply chain visibility and the results of an issuer's prior year inquiry." <b>Though the discussion of the RCOI and DD may partially overlap,</b> a substantive distinction would need to be made between RCOI processes and DD processes.	Yes/No
7	Due Diligence with description of measures described?	Page 56363 of the SEC Final Rule (Federal Register publication): "The Conflict Minerals Report must include the following information: (1) Due Diligence: A description of the measures the registrant has taken to exercise due diligence on the source and chain of custody of those conflict minerals." In other words, it would not be enough for a company's due diligence description to stop at the SOR level and ignore the upstream. For example, a company could satisfy its upstream due diligence description by reporting findings of multi-stakeholder initiatives in which the company actively participates.	Yes/No
8	Nationally or internationally recognized DD framework named?	To date, the only Due Diligence framework that meets the SEC's criteria <sup>99</sup> is the OECD's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. <sup>100</sup> Further clarification would be needed from the SEC whether the <i>China Chamber of Commerce of Metals, Minerals and Chemicals Importers &amp; Exporters (CCCMC)</i> 's Guidelines for Social Responsibility in Outbound Mining Investments <sup>101</sup> would also meet the SEC's criteria.	Yes/No
9	Due Diligence defined as 5 steps?	Page 56363 of the SEC Final Rule (Federal Register publication): "(i) The registrant's due diligence must conform to a nationally or internationally recognized due diligence framework." The OECD framework features 5 steps. Therefore, in order to conform to the OECD framework, it was necessary to discuss the company's Conflict Minerals Program (CMP) in relation to the 5 due diligence steps. Also, to clarify, a company's RCOI would count as a component of the OECD Guidance's Step 2. Furthermore, the relevant due diligence actions elaborated would need to be linked to each OECD step.	Yes/No

<sup>98</sup> SEC, Dodd-Frank Wall Street Reform and Consumer Protection Act Frequently Asked Questions – Conflict Minerals, April 7, 2014. <http://www.sec.gov/divisions/corpfin/guidance/conflictminerals-faq.htm>

<sup>99</sup> According to the SEC, the due diligence framework would need to be (1) nationally or internationally recognized (2) established following due-process procedures, including the broad distribution of the framework for public comment, and (3) consistent with the criteria standards in the Government Auditing Standards established by the Comptroller General of the United States.

<sup>100</sup> OECD (2016), OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264252479-en>

<sup>101</sup> China Chamber of Commerce of Metals, Minerals and Chemicals Importers & Exporters (CCCMC), Guidelines for Social Responsibility in Outbound Mining Investments, December 2, 2015, [https://www.globalwitness.org/documents/18138/201512\\_Chinese\\_Due\\_Diligence\\_Guidelines\\_for\\_Responsible\\_Mineral\\_Supply\\_Chains\\_-\\_En\\_K83fxzt.pdf](https://www.globalwitness.org/documents/18138/201512_Chinese_Due_Diligence_Guidelines_for_Responsible_Mineral_Supply_Chains_-_En_K83fxzt.pdf)

10	If not “DRC conflict free” (explicit), steps to improve due diligence mentioned?	Fulfillment of this requirement would involve a forward-looking statement. Unless a filer explicitly or implicitly concludes for RY 2016 that its necessary 3TG is “DRC conflict free”, the filing will be evaluated for this item.	Yes/No/ NA
11	If not “DRC conflict free” (explicit), were products described?	For the purposes of this evaluation, a description of individual products or product categories received a point for this criterion. A connection would, however, need to be made between the mentioned necessary products and the 3TG mineral(s).	Yes/No/ NA
12	If not “DRC conflict free” (explicit), were the facilities (SOR) used to process the necessary conflict minerals in those products listed?	Unless the company found its products to be “DRC conflict free,” the SEC Rule requires issuers to include a smelter/refiner list. The SEC Rule (page 56364 of the Federal Register publication) requires that ALL smelters/refiners be disclosed, not just those SORs sourcing from the Covered Countries, for all products not identified as conflict free (“(2) <i>Product Description: Any registrant that manufactures products or contracts for products to be manufactured that have not been found to be “DRC conflict free,” as defined in paragraph (d)(4) of this item, must provide a description of those products, the facilities used to process the necessary conflict minerals in those products, the country of origin of the necessary conflict minerals in those products, and the efforts to determine the mine or location of origin with the greatest possible specificity”). Reasonable certainty is the expected level of confidence for this disclosure.</i>	Yes/No/ NA
13	If not “DRC conflict free” (explicit), was/were the Country/ies of Origin disclosed?	The SEC Rule (page 56364 of the Federal Register publication) requires that ALL countries of origin be disclosed, not just Covered Countries. A distinction is worth noting here: the country where the smelter/refiner is located is not necessarily the country of ore origin. Disclosure of the country location of the SOR itself does not meet the disclosure requirement. Reasonable certainty is the expected level of confidence for this disclosure.	Yes/No/ NA
14	If not “DRC conflict free” (explicit), were the efforts to determine the mine or location of origin disclosed?	This criterion is concerned with the disclosure of efforts to determine the mine or location of origin. This indicator does not assess the quality of those efforts or the results. The employment of e.g. the CMRT for this purpose would constitute a first step, but the issuer would need to connect the distribution of the CMRT to efforts to identify the mine or location of origin. CFSI membership, in order to obtain COO data associated with particular SORs, would be a further possible action. In any case, the issuer would need to tie the effort back to the objective of identifying the mine or location of origin. The purpose of the activity is also an important aspect here.	Yes/No/ NA
15	If “DRC conflict free” (explicit), was IPSA filed as part of CMR?	SEC Statement of April 29, 2014: “... an IPSA will not be required unless a company voluntarily elects to describe a product as ‘DRC conflict free’ in its Conflict Minerals Report.” Since the SEC has to date not issued further guidance, the April 29, 2014 guidance is still applicable.	Yes/No/ NA

## Section 2: OECD-based Due Diligence Indicators

The source code of these indicators the OECD’s 5-step Due Diligence Guidance.<sup>102</sup>

### OECD STEP 1: ESTABLISH STRONG COMPANY MANAGEMENT SYSTEMS

<sup>102</sup> OECD (2016), OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264252479-en>



Criterion #	Indicator	Eligibility	Note	Possible answers
<b>A. Adopt and commit to a supply chain policy for minerals originating from conflict-affected and high-risk areas.</b>				
1	Issuer has a policy in place – and communicates it to suppliers and the public – setting forth common principles and standards for responsible supply chains of 3TG from the Covered Countries, against which the company assesses itself and the activities and relationships of suppliers.	Form SD-only filers & CMR filers	The existence of a policy and its communication to suppliers is the threshold.	Yes/No
<b>B. Structure internal management systems to support supply chain due diligence.</b>				
2	Issuer put in place an organizational structure and communication processes that ensures critical information, including the company policy, reaches relevant employees and suppliers.	Form SD-only filers & CMR filers	We place an emphasis here on organizational structure (i.e. a team in place that controls the process), given that the indicator is situated in OECD Step 1. Also relevant here is for a company to identify external organizations they join and other outsourced activities that are part of the management system.	Yes/No
<b>C. Establish a system of controls and transparency over the mineral supply chain.</b>				
3	Issuer supports extended, digital information-sharing systems on suppliers to include smelters/refiners, and adapts systems to assess supplier due diligence in the supply chain of minerals from the Covered Countries.	Form SD-only filers & CMR filers	Specify, e.g., if the company uses a reporting template [such as the Conflict Minerals Reporting Template (CMRT)]. If a software vendor is used, the function performed may also be specified. The particular software vendor need not be specified.	Yes/No
<b>D. Strengthen company engagement with suppliers.</b>				
4	Issuer incorporates policy into commercial contracts and/or written agreements with suppliers, which can be applied and monitored.	Form SD-only filers & CMR filers	As some contracts are longer-term and cannot be modified until renewal, specify whether issuer has begun modifying contracts and will continue to do so as they renew. Referring solely to future measures would not fulfill this indicator.	Yes/No
5	Issuer <i>requires</i> suppliers to source through SORs that have successfully undergone an independent third party audit (CFSP, LBMA, RJC, etc.).	Form SD-only filers & CMR filers	The Guidance, on page 17, states: “A supply chain policy should be incorporated into contracts and/or agreements with suppliers.”  With respect to their own risk management plans, the Guidance (page 104) recommends that “downstream companies should: i) Build and/or exercise leverage over the refiners with red flags in their supply chain(s), who may be able to more effectively and directly mitigate the risks of contributing to conflict. Downstream companies may build leverage over refiners through the	Yes/No



			inclusion of due diligence performance into contracts (where applicable), or working through industry associations and multi-stakeholder initiatives”.	
			Relevant here is whether an issuer’s supply chain policy takes into account the OECD Guidance by requiring, not just recommending, that its suppliers source through SORs that have successfully undergone an independent third party audit (CFSP, LBMA, RJC, etc.).	
<b>E. Establish a company and/or mine level grievance mechanism.</b>				
6	Issuer provides and/or utilizes a grievance mechanism directly or through collaborative arrangements with other companies or organizations, such as an <i>industry program or institutionalized mechanism</i> , or by facilitating recourse to an external expert or body (i.e. ombudsman).	CMR filers	Company-run or 3 <sup>rd</sup> party organization-run grievance mechanisms would all be appropriate. Since there are few known operational grievance mechanisms in the upstream supply chain to date, involvement in an incident report mechanism, such as offered e.g. by iTSCi, would, for the purposes of this year’s evaluation, fulfill this indicator.	Yes/No
<b>OECD STEP 2: IDENTIFY AND ASSESS RISKS IN THE SUPPLY CHAIN</b>				
<b>A. Identify, to the best of their efforts, the SOR(s) of 3TG in their supply chain(s).</b>				
7	Issuer has identified the SORs that produce the refined metals in its supply chain and/or has identified system-level gaps in the upstream.	Form SD-only filers & CMR filers	If an issuer did not identify 100% of the SORs in its supply chain, the issuer should state how it measures the completeness of its data, i.e. numbers or percent of suppliers, whether by sales or absolute numbers, of suppliers who have responded. If the issuer identified system-level gaps (i.e. lack of due diligence capacity in certain regions, or SORs not participating in industry schemes) in the upstream supply chain or SOR, it might describe what type of gaps/issues it brought to the attention of other stakeholders (including governmental organizations, NGOs and industry groups).	Yes/No
<b>B. Identify the scope of the risk assessment of the mineral supply chain.</b>				
8	Issuer engaged with the SOR(s) in its supply chain(s) and obtained from them initial information on country of mineral origin, transit and transportation routes used between mine and smelters/refiners.	Form SD-only filers & CMR filers	This indicator hones in on SOR engagement. The point is that the issuer would not only rely on data communicated by their supplier(s), but once SORs were identified engage the SOR directly to verify the data and get just that much closer to the mine. Instead of directly engaging the SORs in its supply chain(s) to obtain this information, an issuer supporting – through membership – a 3 <sup>rd</sup> party organization that conducts this work, would fulfill this indicator. The organization, however, should be specified, and any relevant activities that the filer participates in directly, if applicable.	Yes/No



<b>C. Assess whether the smelters/refiners have carried out all elements of due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas.</b>				
9.A.	Issuer assessed whether the smelters/refiners have carried out all 5 steps of due diligence for responsible supply chains of 3TG from the DRC and adjoining countries.	CMR filers	An issuer's engagement – i.e. through membership – of a broadly-recognized, 3rd party organization that assessed whether the SOR(s) carried out all relevant elements of due diligence, would fulfill this indicator. If this 3 <sup>rd</sup> party organization did not carry out all elements of due diligence, specify which elements it did and did not carry out.	Yes/No
9.B.	Issuer assessed whether the smelters/refiners have carried out steps 1 & 2 of due diligence for responsible supply chains of 3TG from the DRC and adjoining countries.	Form SD-only filers		Yes/No
<b>D. Where necessary, carry out, including through participation in industry-driven programs, joint spot checks/audits at the mineral smelter/refiner's own facilities.</b>				
10	Issuer carried out, including through participation in industry-driven programs, joint spot checks and/or audits at the mineral smelter/refiner's own facilities.	CMR filers	If issuer participated in a 3 <sup>rd</sup> party initiative (such as the CFSI, LBMA, RJC, and upstream traceability programs including iTSCi and BSP) for this purpose, please specify in which initiative the issuer participated. However, simply mentioning – somewhere in the CMR – that the company was e.g. a CFSI member would not suffice. The relevant function of the 3rd party would need to be specified.	Yes/No
<b>OECD STEP 3: DESIGN AND IMPLEMENT A STRATEGY TO RESPOND TO IDENTIFIED RISKS</b>				
<b>A. Report findings to designated senior management</b>				
11	Issuer's designated senior management was briefed on the gathered information and the actual and potential risks identified in the supply chain risk assessment.	CMR filers	The issuer should identify, by title, the senior manager who is responsible for the program, e.g. Chief Procurement Officer, Chief Sustainability Officer, VP of Compliance. Boilerplate language along the lines that "senior management was notified" would not be sufficient. Also, the act of the Executive officer signing the filing would not count as briefing. If the issuer referred to a designated group or committee being briefed, this would count as long as the group or committee included members of senior management.	Yes/No
<b>B. Devise and adopt a risk management plan</b>				
12	Issuer implemented the risk management plan, monitored and tracked performance of risk mitigation, and it suspended or discontinued engagement with a supplier after failed attempts at risk mitigation or corrective action.	CMR filers	Issuers should report on their monitoring of suppliers, which may include discussion of the types of risk identified, e.g. unidentified SORs or SORs in the supply chain that were not determined to be "DRC Conflict Free." Also relevant here is how an issuer performs risk mitigation if it is unable to identify an SOR. Risk management may also detail when an issuer continues, suspends, or terminates trade with a non-compliant supplier within RY 2016, though listing the specific SOR(s) is not expected.	Yes/No



13	Issuer built and/or exercised its leverage over upstream suppliers.	CMR filers	In this context, “upstream suppliers” refers to the mine-to-SOR tiers, including the SOR tier. Thus, an issuer may build and/or exercise leverage over upstream suppliers through, e.g., (1) membership in an in-region verification and due diligence system, such as iTSCi, Better Sourcing Program, Solutions for Hope, etc., which provided in-region components of risk assessment and mitigation, or (2) concerted capacity building efforts with measured outcomes that target the upstream.	Yes/No
<b>C. 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 refiner after their failed attempts at risk mitigation</b>				
14	Issuer monitored whether its SOR(s) demonstrated significant and measurable improvement within six months from the adoption of their risk management plans.	CMR filers	Issuer could e.g. specify it did so by engaging its supply chain through its Tier 1 suppliers or through participation in an industry-driven program that accomplishes this end. Also, an issuer ensuring that its SOR(s) are verified “DRC conflict free”, and/or can demonstrate measurable improvement year-on-year, would fulfill this indicator. The 6-month timeframe need not be a feature as long as a time-bound, reasonable timeframe is instead specified.	Yes/No
<b>OECD STEP 4: CARRY OUT INDEPENDENT THIRD-PARTY AUDIT OF SMELTER/REFINER’S DUE DILIGENCE PRACTICES</b>				
<b>A. Plan an independent third party audit to verify the implementation of smelter/refiner’s due diligence practices for responsible supply chains of minerals from conflict-affected and high-risk areas</b>				
15	Issuer supported – i.e. through membership – independent third party audits of the SOR’s due diligence practices through industry programs.	CMR filers	For example, please specify if issuer is a member of the CFSI, LBMA, or RJC for this purpose or otherwise supported independent third party audits of SORs.	Yes/No
<b>OECD STEP 5: REPORT ANNUALLY ON SUPPLY CHAIN DUE DILIGENCE</b>				
<b>A. Annually report or integrate into annual sustainability or corporate responsibility reports, additional information on due diligence for responsible supply chains of 3TG from conflict-affected and high-risk areas, with due regard taken of business confidentiality and other competitive or security concerns</b>				
16	Issuer provided annual report on due diligence for responsible supply chains of 3TG from conflict-affected and high-risk areas.	Form SD-only filers & CMR filers	A <i>Form SD-only filer</i> reporting on company management systems (step 1), risk assessment (step 2), plus filing a Form SD (step 5) would fulfill this indicator. A <i>CMR filer</i> reporting on the relevant steps of the OECD DD Guidance would fulfill the OECD’s step 5 Guidance (consistent with Gold supplement). If a <i>CMR filer</i> did not report on the recommended due diligence actions, no point was awarded.	Yes/No
17	Issuer reported on the identification of SOR-level risks under Step 2, and how those risks were mitigated (Step 3).	CMR filers	Where refiners “identified with red flag risks in their supply chain,” the OECD Guidance (pp 103-104) states: “Downstream companies may manage risk by either i) continuing trade with the refiner throughout the course of measurable risk mitigation carried out by the refiner [...]; ii) temporarily suspending trade with the refiner while the refiner is pursuing ongoing measurable risk	Yes/No





			<p>mitigation; or iii) disengaging with a refiner in cases where mitigation appears not feasible or where the refiner has failed to respond to risks". In terms of reporting such risks, the OECD Guidance (p. 113) advises to: "disclose the actual or potential risks identified" under Step 2, and with regard to risk management: "Report on steps taken to implement Step 3. Included in such reporting, companies should describe the steps taken to manage risks, including a summary on the strategy for risk mitigation in the risk management plan".</p> <p>In order to assess this indicator, certain SORs known to be high-risk were cross-referenced with the SORs listed in the issuer's CMDs. Specific SORs were identified by our team as high-risk that met one of the follow criteria: (1) SORs in Covered Countries but not RJC / LBMA / CFSI accredited, (2) SORs located in countries sanctioned by the U.S. government, (3) SORs affiliated with entities on the SDN list. The existence of such high-risk SOR(s) in its supply chain without an explanation of steps taken to manage such risk lost this point, as the apparent red flag was either missed or the mitigation approach was not explained. In order to obtain this point, the issuer did not need to identify the specific SOR(s) in its supply chain as high-risk or blacklisted. However, in the disclosure it would have needed to be made clear that the issuer had indeed identified high-risk SORs in its supply chain, and that this cognizance was accompanied by a risk mitigation strategy that was enforced, and consequent action took place in 2016 – in accordance with the corresponding advice in the OECD Guidance.</p>	
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18	If audit(s) was/were conducted, issuer published the audit report(s) of its due diligence practices, with due regard taken of business confidentiality and other competitive concerns and responses to identified risks.	CMR filers	Publishing the IPSA results in the issuer's CMR would fulfill this indicator.	Yes/No/NA
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### Section 3: Additional (non-graded) Indicators

These indicators, while non-graded, are of note to stakeholders and commonly mentioned in CMRs when applicable.

1	Which of the 4 "3TG" does the company have in its "necessary products"?	<ul style="list-style-type: none"> <li><input type="radio"/> Tin</li> <li><input type="radio"/> Tungsten</li> <li><input type="radio"/> Tantalum</li> <li><input type="radio"/> Gold</li> </ul>
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2	Total number of 3TG relevant suppliers?	#
3	Supplier CMRT response rate (%)?	%
4	Supplier CMRT response rate >90% of either total in-scope suppliers or total spend on in-scope suppliers.	Yes/No
5	Smaller reporting company or other issuer?	Yes/No
6	Membership in any of the following associations:	<ul style="list-style-type: none"> <li>○ ITRI Tin Supply Chain Initiative (iTSCI)</li> <li>○ Tungsten Industry Conflict Minerals Council (TI-CMC)</li> <li>○ London Bullion Market Association (LBMA)</li> <li>○ Responsible Jewellery Council (RJC)</li> <li>○ Conflict Free Sourcing Initiative (CFSI)</li> <li>○ Dubai Multi Commodities Centre (DMCC)</li> <li>○ Better Sourcing Program (BSP)</li> </ul>
7	Independent 3 <sup>rd</sup> party audits of SORs in 3TG supply chain >90%?	Yes/No
8	% of audited SORs in 3TG supply chain(s):	<ul style="list-style-type: none"> <li>a. combined</li> <li>b. disaggregated <ul style="list-style-type: none"> <li>▪ Tin</li> <li>▪ Tungsten</li> <li>▪ Tantalum</li> <li>▪ Gold</li> </ul> </li> </ul>
9	Issuer mentioned it recommended or required all its suppliers to source through SORs that were verified DRC conflict free?	<ul style="list-style-type: none"> <li>○ recommended (e.g. advised to migrate SORs to verified conflict free)</li> <li>○ required (e.g. requires SORs to be in CFSP program)</li> </ul>
10	Issuer has a policy in place stipulating that it avoids sourcing 3TG from the covered countries (boycott).	Yes/No
11	Embargoed COO (countries against which the U.S. has issued comprehensive embargoes):	<ul style="list-style-type: none"> <li>○ North Korea</li> <li>○ Sudan (North)</li> <li>○ Iran</li> <li>○ Syria</li> <li>○ Cuba</li> </ul>
12	Non-plausible SOR countries listed:	<ul style="list-style-type: none"> <li>○ DRC</li> <li>○ Rwanda</li> </ul>
13	Non-plausible COO countries listed (based on the most recent USGS Mineral Yearbooks):	<ul style="list-style-type: none"> <li>○ Belarus</li> <li>○ Belgium</li> <li>○ Bermuda</li> <li>○ France</li> <li>○ Hong Kong</li> <li>○ Hungary</li> <li>○ Israel</li> <li>○ Italy</li> <li>○ Luxembourg</li> <li>○ Netherlands</li> <li>○ Singapore</li> <li>○ UAE/United Arab Emirates</li> </ul>
14	Issuer has certain high-risk SORs in supply chain?	Yes/No

