

Heads Up

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May 31, 2014, the filing deadline for the initial filings of Form SD, is approaching, yet there is much uncertainty regarding what Form SD and, if applicable, the accompanying CMR should look like.

Navigating Reporting Requirements for Form SD and Conflict Minerals Reports

By Beth A. Schneider and Kristen Sullivan, Deloitte & Touche LLP

Introduction

In August 2012, the SEC released its [rule](#) on conflict minerals (the “SEC rule”) in accordance with Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). The SEC rule requires registrants with conflict minerals that are necessary to the functionality or production of their products to report annually on Form SD (which stands for “special disclosures”) for each calendar year commencing with 2013. In certain situations, a registrant may be required to include, as an exhibit to its Form SD, a Conflict Minerals Report (CMR), which provides expanded disclosures.

May 31, 2014,¹ the filing deadline for the initial filings of Form SD, is approaching, yet there is much uncertainty regarding what Form SD and, if applicable, the accompanying CMR should look like. The instructions to Form SD provide the skeletal framework for preparation of Form SD and a CMR. The SEC rule also requires that an independent private sector audit (IPSA) be obtained in certain situations and the Form SD instructions also provide information as to what is to be included in a CMR when an IPSA is required.

This *Heads Up* explores the disclosures that a registrant is required to include in Form SD — and the accompanying CMR — on the basis of possible scenarios that the registrant might encounter. This publication also includes an analysis of whether an IPSA is required in each scenario. Further, [Appendix A](#) of this *Heads Up* provides a sample Form SD and a description of potential content for two of the scenarios, while [Appendix B](#) of this *Heads Up* includes a table summarizing the requirements for each scenario.

Background on the SEC Conflict Minerals Rule

Section 1502 of the Dodd-Frank Act required the SEC to promulgate rules under the Securities Exchange Act of 1934 whereby registrants with necessary conflict minerals² must annually disclose certain information regarding the sourcing of such minerals. Because the mining of certain minerals in the Democratic Republic of the Congo (DRC) and adjoining countries was attributed to funding activities of violence in this region, this section of the Dodd-Frank Act was aimed at more responsible sourcing by U.S. registrants.

Conflict minerals are currently identified as “columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives, which are limited to tantalum, tin, and tungsten, unless the Secretary of State determines that additional derivatives are financing conflict in the [DRC] or an adjoining country.”³

¹ Given that the filing date falls on a Saturday, registrants will have until June 2, 2014.

² That is, conflict minerals that are necessary to the functionality or production of their products.

³ See the definitions section of the instructions to Form SD for the complete definition of conflict minerals, which notes that the Secretary of State may expand the listing.

The nature of the disclosures that a registrant most likely will need to provide about conflict minerals may vary according to how many steps of the SEC's stepped process the registrant is required to complete.

The SEC rule requires registrants with necessary conflict minerals to perform a reasonable country of origin inquiry (RCOI) to determine whether such minerals may have originated in the DRC or an adjoining country. If so, the registrant then performs due diligence measures to ascertain whether such minerals were from sources that funded armed groups. The SEC rule requires registrants to design their due diligence framework in accordance with a nationally or internationally recognized due diligence framework. The framework that many registrants are expected to use is the [OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Second Edition](#), which is published by the Organisation of Economic Co-Operation and Development (the "OECD").

Temporary Transition Period

Given the challenges for registrants and their suppliers in adopting the requirements of the SEC rule and the difficulties they encounter in obtaining information they may need from companies throughout the supply chain to determine whether a registrant's products are "DRC conflict free,"⁴ the SEC has permitted a temporary period in which registrants may report that certain products are "DRC conflict undeterminable." We refer to this period herein as the temporary transition period, which, for companies other than smaller reporting companies, is the two years after the issuance of the SEC rule (namely, the 2013 and 2014 reporting years) and for smaller reporting companies is four years. The SEC rule also specified certain exceptions to the requirement for an IPSA during the temporary transition period, discussed later in this *Heads Up*.

Reporting Under the SEC Conflict Minerals Rule

Page 33 of the SEC rule presents a flowchart summarizing the stepped process for determining whether a registrant is required to file Form SD and, if so, whether a CMR is required. The nature of the disclosures that a registrant most likely will need to provide about conflict minerals may vary according to how many steps of the SEC's stepped process the registrant is required to complete. With each successive step, additional disclosure requirements kick in and, ultimately, the need for an IPSA. Thus, a registrant's individual facts and circumstances establish whether the registrant is required to file Form SD with or without a CMR (which, if required, is included as an exhibit to Form SD), the specific disclosures that must be included in Form SD and the accompanying CMR, and whether an IPSA is required. A registrant may find itself in one of five scenarios in which it could file Form SD. These scenarios, which are labeled below as Scenarios A through E to make it easier for readers to navigate the disclosure requirements, differ with respect to the outcome of a registrant's determination regarding the sourcing of its necessary conflict minerals as it completes the SEC stepped process. The five scenarios are as follows:

- **On the basis of its RCOI results, the registrant is required to file a Form SD but not a CMR** (Scenario A) — A registrant is in Scenario A if as a result of performing RCOI, the registrant:
 - Has concluded that its necessary conflict minerals:
 - Did not originate in the DRC or an adjoining country.
 - Came from recycled or scrap sources.
 - Has no reason to believe that its necessary conflict minerals may have originated in the DRC or an adjoining country.
 - Reasonably believes that its necessary conflict minerals came from recycled or scrap sources.

⁴ The SEC defines "DRC conflict free" as "does not contain conflict minerals necessary to the functionality or production of that product that directly or indirectly finance or benefit armed groups as defined in [the SEC rule] in the [DRC] or an adjoining country." The SEC rule also specifies that conflict minerals that the registrant obtains from recycled or scrap sources are considered DRC conflict free.

Registrants that are unable to determine the sourcing of their necessary conflict minerals may classify them as “DRC conflict undeterminable” during the temporary transition period provided by the SEC.

- ***On the basis of its due diligence results, the registrant is required to file a Form SD but not a CMR*** (Scenario B) — A registrant is in Scenario B if as a result of performing **due diligence on the source and chain of custody**⁵ of its conflict minerals, the registrant:
 - Has determined that its necessary conflict minerals:
 - Did not originate in the DRC or an adjoining country.
 - Came from recycled or scrap sources.
- ***The registrant is required to file both a Form SD and a CMR but is not required to obtain an IPSA because the sourcing is undeterminable*** (i.e., the sourcing is “DRC conflict undeterminable”) (Scenario C) — A registrant is in Scenario C if as a result of performing due diligence on the source and chain of custody of its necessary conflict minerals, the registrant:
 - Was unable to determine whether or not its necessary conflict minerals:
 - Originated in the DRC or an adjoining country.
 - Came from recycled or scrap sources.
 - Determined that some of its necessary conflict minerals originated in the DRC or an adjoining country but was unable to determine whether such minerals came from sources that directly or indirectly financed or benefited armed groups, as this term is defined in the SEC rule.⁶

Under the SEC rule, this scenario is only applicable during the temporary transition period. A registrant that is still unable to determine the sourcing after this time is likely to be in Scenario D.

- ***The registrant is required to file a Form SD with a CMR as well as an IPSA report because sourcing for one or more products has not been found to be DRC conflict free*** (Scenario D) — A registrant is in Scenario D if as a result of performing due diligence on the source and chain of custody of its necessary conflict minerals, the registrant has determined that it has one or more products containing necessary conflict minerals that have **not** been found to be DRC conflict free.

Although considered an unlikely occurrence during the temporary transition period, if a registrant determines that some sourcing of its necessary conflict minerals may have directly or indirectly benefited armed groups even though the registrant is unable to make a determination for other sourcing, it appears that the IPSA requirement may be triggered (see [Requirements for an IPSA](#) section below). However, because views may vary regarding the applicability of the SEC rule’s exceptions to obtaining an audit⁷ in different situations during the temporary transition period, it is important for registrants to discuss such determinations with their SEC counsel. Regardless, after the temporary transition period, registrants that are still unable to determine the sourcing of their necessary conflict minerals most likely will be required to describe such products as having “not been found to be DRC conflict free” and to obtain an IPSA.

- ***The registrant is required to file a Form SD with a CMR as well as an IPSA report because products are sourced from the region but are otherwise DRC conflict free*** (Scenario E) — A registrant is in Scenario E if the registrant has one or more products with necessary conflict minerals that have been sourced from the DRC or an adjoining country and are not from recycled or scrap sources but that are otherwise found to be DRC conflict free (e.g., sourcing from a smelter that has been certified as DRC conflict free under recognized certification protocols).

⁵ A registrant may have performed due diligence measures because it had reason to believe, after performing RCOL, that some of its necessary conflict minerals may have originated in the DRC or an adjoining country and did not come from recycled or scrap sources. In some cases, the registrant might subsequently conclude that its necessary conflict minerals did not come from the DRC or an adjoining country after all.

⁶ The term “armed group” is defined in Item 1.01(d)(2) in the Form SD instructions (page 352 of the SEC rule).

⁷ See Item 1.01(c)(1)(iv) in the instructions to Form SD (pages 349–350 of the SEC rule) for the audit exceptions.

The SEC instructions for Form SD provide an illustration of the cover page and signature section and identify certain content requirements and required headings.

The SEC rule’s disclosure requirements related to each of these scenarios are explored in more depth below. Because the disclosures will ultimately depend on a registrant’s individual facts and circumstances, registrants should consult their SEC counsel in determining the appropriate disclosures to provide.

General Instructions

The SEC has published instructions for Form SD that provide an [illustration](#) of the cover page and signature section. The instructions also identify certain content requirements and a required heading. Some initial versions of both Form SD and the CMR that various organizations have been drafting as they attempt to navigate the SEC rule and Form SD instructions appear to contain some inconsistencies with the instructions; accordingly, it seems worthwhile to analyze the requirements and discuss the potential latitude that may be appropriate with respect to the structure of Form SD and the CMR.

General Instruction D of Form SD states that “[t]he report [Form SD] shall contain the **number and caption of the applicable item**”⁸ (emphasis added). Accordingly, we expect to see the following items appearing in Form SDs (although some early drafts seem to be missing them):

- Item 1.01 Conflict Minerals Disclosure and Report.
- Item 2.01 Exhibits.

The Form SD instructions also include two distinct sections, under which the above items appear:

- Section 1 – Conflict Minerals Disclosure.
- Section 2 – Exhibits.

Although the instructions do not explicitly mention the use of such section numbering, it might further improve the readability of a registrant’s Form SD.

Scenario-Specific Disclosure Requirements

This section identifies the specific disclosure requirements that apply to each of the scenarios above, along with views on how a registrant might address certain disclosure requirements.

Scenario A and Scenario B Reporting — Registrant Determined That It Is *Not* Sourcing From the DRC or an Adjoining Country

Form SD

A registrant in Scenario A or B (as defined above) is required to include in the body of Form SD a separate heading, “Conflict Minerals Disclosure,” under which the registrant is to disclose certain matters pertaining to its RCOI or due diligence. The following table summarizes these requirements:

Scenario	A	B
Form SD		
Section 1 — Conflict Minerals Disclosure (heading)	helpful	helpful
Item 1.01 Conflict Minerals Disclosure and Report (heading)	required	required
Conflict Minerals Disclosure (heading)	required	required
• Determination disclosure	required	required
• RCOI description	required	

⁸ See page 345 of the SEC rule.

The Form SD instructions do not require registrants to provide other disclosures about RCOI or due diligence in the main body of Form SD when filing a CMR.

Scenario	A	B
Form SD (continued)		
• RCOI and due diligence description		required
• RCOI results	required	
• RCOI and due diligence results		required
Reference to CMR		
Link to website	required	required
Section 2 — Exhibits		
Item 2.01 Exhibits (heading)		
Exhibit 1.01 Conflict Minerals Report		

The determination disclosure for Scenario A is the registrant’s conclusion that its necessary conflict minerals did not originate in the DRC or an adjoining country or came from recycled or scrap sources; that it has no reason to believe that its necessary conflict minerals may have originated in the DRC or an adjoining country; or that it reasonably believes that its necessary conflict minerals did come from recycled or scrap sources.

The determination disclosure for Scenario B is the registrant’s conclusion that its necessary conflict minerals did not originate in the DRC or an adjoining country or did come from recycled or scrap sources.

Note that the difference between the disclosures in Scenario A and those in Scenario B is that in Scenario B, an entity is required to include disclosures regarding the performance of both RCOI and due diligence together with the related results.

CMR and IPSA Applicability

In Scenarios A and B, because none of the registrant’s necessary conflict minerals were found to have come from the DRC or an adjoining country, neither a CMR nor an IPSA is required.

Scenario C Reporting — Products That Are DRC Conflict Undeterminable

Form SD

When a registrant is required to file a CMR (referred to as Exhibit 1.01), the main body of Form SD is to include a separate heading, “Conflict Minerals Disclosure” (as in Scenarios A and B). However, in Scenario C, the disclosures under the heading are as follows:

- Disclosure that the registrant has filed a CMR.
- Link to the registrant’s website where the CMR is publicly available.

Note that the Form SD instructions do not require registrants to provide other disclosures about RCOI or due diligence in the main body of Form SD when filing a CMR.

On the basis of General Instruction D to Form SD, we also expect to see Item 2.01 listed in the main body of Form SD, with Exhibit 1.01 listed underneath as an exhibit that is filed with Form SD (see [General Instructions](#) section above).

CMR and IPSA Applicability

Although the SEC instructions are silent regarding the placement of the CMR when a CMR is required, it is likely to follow the signature page of Form SD, be titled accordingly

The SEC rule describes certain steps as RCOI and others as due diligence; however, in practice, some registrants might not distinguish between RCOI and due diligence in performing the measures or in their descriptions.

as the “Conflict Minerals Report,” and be labeled as Exhibit 1.01 at the top. The Form SD instructions state that the CMR must include the following information:

(1) *Due Diligence* — The registrant is required to:

- Include a description of the measures the registrant has taken to exercise due diligence on the source and chain of custody of those conflict minerals.⁹

The SEC rule describes certain steps as RCOI and others as due diligence; however, in practice, some registrants might not distinguish between RCOI and due diligence in performing the measures. We believe that some registrants also may not try to distinguish between them in the description of their measures.

- Disclose the steps it has taken or will take, if any, since the end of the period covered in its most recent **prior** CMR to mitigate the risk that its necessary conflict minerals benefit armed groups, including any steps to improve its due diligence.¹⁰

For the May 31, 2014, filing date, there most likely will have been no prior CMRs filed; accordingly, disclosures related to the second bulleted item are not likely to be required until the second year (and following years for smaller reporting companies) during which the “DRC conflict undeterminable” classification is permitted. However, on the basis of information exchanged in different forums, some registrants appear to be considering disclosing, in the initial filing, measures that they plan to take in the future regardless of whether such disclosures are required.

(2) *Product Description* — For products that are classified as DRC conflict undeterminable, the registrant is required to include the following:

- Description of those products.
- The facilities used to process the necessary conflict minerals in those products, if known.
- The country of origin of the necessary conflict minerals in those products, if known.
- The efforts to determine the mine or location of origin with the greatest possible specificity.¹¹

A registrant may obtain its necessary conflict minerals from a number of different facilities for a given product, some from a conflict-free source and others from an unknown source. The [Conflict-Free Sourcing Initiative](#) has created [examples](#) of disclosures related to the second and third requirements above, which can help registrants deal with some of the complexities of products that are DRC conflict undeterminable.

Further, note that the Form SD instructions state that a registrant is not required to provide the above product description information “if the necessary conflict minerals in its product are solely from recycled or scrap sources because those products are considered ‘DRC conflict free.’” Similarly, we expect that registrants will most likely not provide in-depth disclosures regarding other products that they have concluded are DRC conflict free; however, some registrants might provide general disclosures identifying certain products or a percentage of products as DRC conflict free.

Because an IPSA is not required when a registrant is permitted to report as DRC conflict undeterminable, there are no disclosure requirements pertaining to an IPSA in the Form SD or accompanying CMR.

⁹ Text is derived from Item 1.01(c)(1) of the Form SD instructions.

¹⁰ Text is derived from Item 1.01(c)(1)(iii) of the Form SD instructions.

¹¹ Text is derived from Item 1.01(c)(2)(i) of the Form SD instructions.

Scenario D Reporting — One or More Products Have Not Been Found to Be DRC Conflict Free

If a registrant is still unable to determine, after the expiration of the temporary transition period, whether some of its products are DRC conflict free, such products are to be described as “having not been found to be DRC conflict free.”¹²

Form SD

When a registrant is required to file a CMR (referred to as Exhibit 1.01), the main body of Form SD is to include a separate heading, “Conflict Minerals Disclosure” (as in Scenarios A and B). However, in Scenario D, the disclosures under the heading are as follows:

- Disclosure that the registrant has filed a CMR.
- Link to the registrant’s website where the CMR is publicly available.

Note that the Form SD instructions do not require registrants to provide other disclosures about RCOI or due diligence in the main body of Form SD when filing a CMR.

On the basis of General Instruction D to Form SD, we also expect to see Item 2.01 listed in the main body of Form SD, with Exhibit 1.01 listed underneath as an exhibit that is filed with Form SD.

CMR and IPSA Applicability

As stated earlier, although the SEC instructions are silent regarding the placement of the CMR when a CMR is required, the CMR is likely to follow the signature page, be titled accordingly as the “Conflict Minerals Report,” and be labeled as Exhibit 1.01 at the top. The Form SD instructions state that the CMR must include the following information when products have **not** been found to be DRC conflict free:

(1) *Due Diligence* — The registrant is required to include:

- A description of the measures the registrant has taken to exercise due diligence on the source and chain of custody of those conflict minerals.¹³

The SEC rule describes certain steps as RCOI and others as due diligence; however, in practice, some registrants might not distinguish between RCOI and due diligence in performing the measures. We believe that some registrants also may not try to distinguish between them in the description of their measures.

- Because an IPSA is required in this scenario, the following matters pertaining to the IPSA:
 - Include a statement that the registrant has obtained an IPSA.
 - Identify the IPSA auditor if the auditor is not identified in the IPSA report.
 - Provide the IPSA report.¹⁴

We expect that IPSA reports likely will identify the auditor (the organization that performed the IPSA)¹⁵ and that the registrant therefore will not need to identify the auditor in the CMR. Given that the product description (see below) is part of the CMR, we expect that the IPSA report might appear at the end of the CMR after the registrant’s disclosures.

When a CMR is required, the CMR is likely to follow the signature page, be titled accordingly as the “Conflict Minerals Report,” and be labeled as Exhibit 1.01 at the top.

¹² See Instruction 2 to Item 1.01 in the Form SD instructions (page 354 of the SEC rule).

¹³ Text is derived from Item 1.01(c)(1) of the Form SD instructions.

¹⁴ Text is derived from Item 1.01(c)(1)(ii)(B)–(C) of the Form SD instructions.

¹⁵ The Attestation Standards specifically require the examination report to include “the manual or printed signature of the practitioner’s firm.” Although the Performance Audit standards are silent on this matter, such audit reports are likely to contain the identity of the auditor in some manner.

The Conflict-Free Sourcing Initiative gives examples of certain disclosures about product descriptions that can help registrants deal with some of the complexities of providing disclosures about products that are DRC conflict undeterminable.

(2) *Product Description* — The registrant is required to include:

- For products that have **not** been found to be DRC conflict free:
 - 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.
 - The efforts to determine the mine or location of origin with the greatest possible specificity.¹⁶
- For products that are DRC conflict undeterminable:
 - A description of those products.
 - The facilities used to process the necessary conflict minerals in those products, if known.
 - The country of origin of the necessary conflict minerals in those products, if known.
 - The efforts to determine the mine or location of origin with the greatest possible specificity.¹⁷

Note that a registrant might have some products that have **not** been found to be DRC conflict free and others that have been classified as DRC conflict undeterminable. Thus, such a registrant could include two separate classifications in the product description section of the CMR during the temporary transition period. After the temporary transition period, a registrant would describe products whose conflict minerals status is still undeterminable as having not been found to be DRC conflict free.

The Conflict-Free Sourcing Initiative gives [examples](#) of certain disclosures about product descriptions that can help registrants deal with some of the complexities of providing disclosures pertaining to products that are DRC conflict undeterminable. These examples also may be useful to registrants that are preparing disclosures about products that have not been found to be DRC conflict free.

As in Scenario C, a registrant is not required to provide the above product description information for a product “if the necessary conflict minerals in its product are solely from recycled or scrap sources because those products are considered ‘DRC conflict free.’” Similarly, we expect that registrants likely will not provide in-depth disclosures about products that they have concluded are DRC conflict free; however, some registrants might provide general disclosures that identify certain products or a percentage of products as DRC conflict free.

Scenario E Reporting — Sourcing From the DRC or an Adjoining Country Is DRC Conflict Free

Registrants are required to file Form SD and a CMR and to obtain an IPSA when they have sourced from the DRC or an adjoining country even if they have determined that such conflict minerals did not directly or indirectly benefit armed groups (e.g., from certified conflict-free smelters). The disclosure discussion in this section assumes that the registrant has concluded that all of its products containing necessary conflict minerals are DRC conflict free. However, if the registrant also has one or more other products whose conflict-free status is undeterminable, the registrant is likely to apply a combination of the disclosure requirements from Scenarios C and E. Although some products might be described as DRC conflict undeterminable, we expect that the IPSA requirement could be triggered because of the sourcing from the DRC or an adjoining country.

¹⁶ Text is derived from Item 1.01(c)(2) of the Form SD instructions.

¹⁷ Text is derived from Item 1.01(c)(2)(i) of the Form SD instructions.

Form SD

The main body of Form SD contains a separate heading, “Conflict Minerals Disclosure” (as in Scenarios C and D), under which a registrant is to include the following disclosures:

- Disclosure that the registrant has filed a CMR.
- Link to the registrant’s website where the CMR is publicly available.

Note that the Form SD instructions do not require a registrant to provide other disclosures about RCOI or due diligence in the main body of Form SD when filing a CMR.

On the basis of General Instruction D, we also expect to see Item 2.01 listed in the main body of Form SD, with Exhibit 1.01 listed underneath as an exhibit that is filed with Form SD.

CMR

As stated earlier, although the SEC instructions are silent regarding the placement of the CMR, the CMR is likely to follow the signature page, be titled accordingly as the “Conflict Minerals Report,” and be labeled as Exhibit 1.01 at the top.

The Form SD instructions state that the CMR must include the following information:

(1) *Due Diligence* — The registrant is required to include:

- A description of the measures the registrant has taken to exercise due diligence on the source and chain of custody of those conflict minerals.¹⁸

As stated earlier, the SEC rule describes certain steps as RCOI and others as due diligence; however, in practice, some registrants might not distinguish between RCOI and due diligence in performing the measures. We believe that some registrants also may not try to distinguish between them in the description of their measures.

This description may include measures describing what was obtained to form the registrant’s conflict-free conclusion (e.g., certifications of smelters).

- Because an IPSA is required in this scenario, the following matters pertaining to the IPSA:
 - Include a statement that the registrant has obtained an IPSA.
 - Identify the IPSA auditor if the auditor is not identified in the IPSA report.
 - Provide the IPSA report.¹⁹

We expect that IPSA reports likely will identify the auditor (the organization that performed the IPSA) and that the registrant therefore will not need to identify the auditor in the CMR. Accordingly, please make this a second paragraph (see immediately preceding box for the style).

Although disclosures regarding product descriptions do not appear to be required for registrants in Scenario E (see Product Description section below), if the registrant voluntarily includes disclosures under this heading, it would be part of the CMR. We expect that, in such circumstances, the IPSA report would appear at the end of the CMR after the registrant’s disclosures (required and voluntary).

(2) *Product Description* — The Form SD instructions do not include specific disclosure requirements for products that have been found to be DRC conflict free.

The Form SD instructions do not include specific disclosure requirements for products that have been found to be DRC conflict free.

¹⁸ Text is derived from Item 1.01(c)(1) of the Form SD instructions.

¹⁹ Text is derived from Item 1.01(c)(1)(ii)(B)–(C) of the Form SD instructions.

Although the Form SD instructions do not include specific disclosure requirements for products that have been found to be DRC conflict free, a registrant in Scenario E might voluntarily disclose that its products containing necessary conflict minerals have been determined to be DRC conflict free.

Illustrative Example of Form SD and CMR

Given that a number of registrants have been struggling with creating the Form SD and CMR, we offer some thoughts on form and content for reporting under Scenario C or D (based on the instructions to Form SD) in the illustrative example in [Appendix A](#) of this *Heads Up*. As the first filing date approaches and various organizations share proposed reporting practices, we expect conflict minerals reporting practices to evolve, and as Form SD submissions become available, leading practices will emerge. In addition, the SEC might provide further clarification to help registrants implement the reporting requirements of the SEC rule.

Requirements for an IPSA

The table below summarizes when an IPSA might be required under the various scenarios described above. As with the disclosure requirements, registrants should consult their SEC counsel in determining whether an IPSA is required in their specific situation.

Determination of Conflict Minerals Status	IPSA Required?
On the basis of RCOI, products have been classified as DRC conflict free because no sourcing is from the DRC or an adjoining country (Scenario A)	No
On the basis of RCOI and due diligence measures, products have been classified as DRC conflict free because no sourcing is from the DRC or an adjoining country (Scenario B)	No
On the basis of RCOI and due diligence measures, products are only classified as DRC conflict undeterminable (Scenario C)	Not during temporary transition period
Some products have been classified as DRC conflict undeterminable and other products have not been found to be DRC conflict free (combination of Scenarios C and D) (This combination is only possible during the temporary transition period, after which registrants are required under the SEC rule to describe such products as having not been found to be DRC conflict free (Scenario D))	Yes, because the entity determined that the sourcing for certain products may have benefited armed groups
Some products are DRC conflict undeterminable and others are found to contain conflict minerals sourced from the DRC or an adjoining country but otherwise DRC conflict free (combination of Scenarios C and E)	Yes, because the entity determined that it was sourcing from the DRC or an adjoining country for some products even though such sourcing was DRC conflict free
Some products have not been found to be DRC conflict free (Scenario D)	Yes
Some products have not been found to be DRC conflict free while other products have been determined to be sourced from the DRC or an adjoining country but are otherwise DRC conflict free (combination of Scenarios D and E)	Yes
Sourcing from the DRC or an adjoining country but is DRC conflict free (Scenario E)	Yes

Conclusion

It is apparent from this analysis and the summary table in [Appendix B](#) of this *Heads Up* that the content of Form SDs and any accompanying CMRs may vary significantly from registrant to registrant, particularly if the Form SD of a registrant in Scenario A is compared with that of a registrant in Scenario E or the Form SD or CMR of a registrant in Scenario C or D is compared with that of a registrant in Scenario B, who would not

Registrants should consult their SEC counsel in determining whether an IPSA is required in their specific situation.

have a CMR. Also, there currently appears to be some confusion regarding whether an IPSA is triggered during the temporary transition period if a registrant has different determinations for different products (e.g., DRC conflict undeterminable for some products but DRC conflict free for others). Accordingly, each registrant should consider its specific facts and circumstances, including (1) the outcome of its RCOI and, if applicable, due diligence measures in determining the required disclosures for its situation and (2) for determining whether an IPSA is required. Given the complexities of the SEC rule and reporting requirements, registrants should consult their SEC counsel as part of this process.

Appendix A — Sample Form SD and CMR

The sample Form SD below illustrates how the above disclosures for Scenarios C and D might be captured in Form SD and the accompanying CMR following the Form SD instructions of the SEC rule. The matters or sections that a registrant is likely to complete are in *italics*. The SEC rule does not require specific section headings in the CMR; however, such headings have been included for structural purposes. Given that the required disclosures may depend on a registrant's facts and circumstances, registrants are encouraged to work with their SEC counsel in developing their own Form SDs and CMRs.

UNITED STATES		
SECURITIES AND EXCHANGE COMMISSION		
Washington, D.C. 20549		
FORM SD		
SPECIALIZED DISCLOSURE REPORT		
<hr/>		
<i>(Exact name of the registrant as specified in its charter)</i>		
<hr/>		
<i>(State or other jurisdiction of incorporation or organization)</i>	<i>(Commission File Number)</i>	<i>(IRS Employer Identification No.)</i>
<hr/>		
<i>(Address of principal executive offices)</i>	<i>(Zip code)</i>	
<hr/>		
<i>(Name and telephone number, including area code, of the person to contact in connection with this report.)</i>		
<p>Check the appropriate box to indicate the rule pursuant to which this form is being filed, and provide the period to which the information in this form applies:</p>		
<p>_____ Rule 13p-1 under the Securities Exchange Act (17 CFR 240.13p-1) for the reporting period from January 1 to December 31, ____.</p>		
Section 1 — Conflict Minerals Disclosure		
Item 1.01 Conflict Minerals Disclosure and Report Item 1.01 instructions require this heading		
<i>Conflict Minerals Disclosure</i> Item 1.01 instructions require this heading		
<i>The registrant is required to disclose that it has filed a CMR and provide the link to its Internet website where the CMR is publicly available.</i>		
Example: The Conflict Minerals Report for the calendar year ended December 31, 2013 filed herewith as Exhibit 1.01, is available at <i>[link to the registrant's website where the CMR is publicly available]</i> .		
Section 2 — Exhibits		
Item 2.01 Exhibits Item 1.01 instructions require this heading when a CMR report is filed		
Exhibit 1.01	Conflict Minerals Report	
SIGNATURES		
<p>Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the duly authorized undersigned.</p>		
<hr/>		
<i>(Registrant)</i>		
<hr/>		
By (Signature and Title)	<i>(Date)</i>	
Registrants are required to print name and title of the registrant's signing executive officer under his or her signature.		

Conflict Minerals Report

The registrant is required to file this report with Form SD unless it has determined that its necessary conflict minerals (1) came from recycled or scrap sources or (2) did not originate in the DRC or an adjoining country. Specific section headings are not required; however, are included for structural purposes.

[The registrant might include an introduction section (with or without a heading) to include matters such as the following:

- *A description of the company and why it is filing the CMR (for example, because it believes that, or is unable to determine whether, certain products that the registrant contracts to manufacture contain necessary conflict minerals that originated in the DRC or an adjoining country)*
- *Which conflict minerals are considered necessary to the functionality or production of such products*
- *A description of certain aspects of RCOI that it performed*
- *A description of its conflict minerals policy].*

Part I. Due Diligence

[The registrant might provide introductory information; for example, that the registrant has performed due diligence on the source and chain of custody of the conflict minerals that are included in its products and for which, based on its RCOI, the registrant has reason to believe may have originated in the DRC or an adjoining country and may not have come from recycled or scrap sources.]

This heading is not required; however, the registrant might consider including it (or something similar) to provide more clarity on the topics included in the CMR.

Design of Due Diligence

[The registrant might include an assertion in the CMR that its due diligence conforms to/is consistent with a nationally or internationally recognized due diligence framework that it used (e.g., the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (Second Edition)).]

This heading is not required; however, the registrant might consider including it (or something similar) to provide more clarity on the topics included in the CMR and so that the auditors may appropriately reference what their IPSA covered.

Due Diligence Measures Performed

[The registrant is required to include in the CMR the description of the measures it has taken to exercise due diligence on the source and chain of custody of the conflict minerals. Some measures might be identified as part of the registrant's performance of RCOI and included in a different section of the CMR (for example, the conflict minerals policy might be included in an introductory section). The description of the measures undertaken might include the following (not limited to):

- A. *The registrant's adopted conflict minerals policy (governing the supply chain of conflict minerals from the DRC or an adjoining country), and how the policy is communicated to relevant employees and suppliers.*
- B. *The organization of the registrant's internal management team supporting supply chain due diligence, including the structure, communication process and reporting responsibilities.*
- C. *The registrant's system of controls and transparency over its conflict mineral supply chain.*
- D. *The registrant's process related to identification and assessment of risk in the supply chain.*
- E. *Representations received from the registrant's suppliers or processing facilities, including DRC conflict-free designations from a recognized industry group, independent audits of a processing facility's supply chain, or other certifications or audits.*
- F. *Supporting documentation received from suppliers or processing facilities regarding whether the conflict minerals finance or benefit armed groups in the DRC or an adjoining country.*
- G. *The registrant's process to manage risks identified in the supply chain, including measurable risk mitigation measures.]*

This heading is not required; however, the registrant might consider including it to separate disclosures related to the IPSA from the due diligence measures above.

Independent Private Sector Audit

[If an IPSA is required, the registrant is required to include a statement in the CMR that it obtained an independent private sector audit of the CMR and provide the audit report prepared by the auditor in accordance with standards established by the Comptroller General of the United States. The registrant is also required to identify the independent private sector auditor of the report if the auditor is not identified in the audit report.]

[The registrant might note that the audit report is provided along with the CMR; however, this is not required.]

This heading is not required; however, the registrant might consider including it (or something similar) to separate disclosures related to the risk mitigation or future due diligence measures from the disclosures above.

Risk Mitigation/Future Due Diligence Measures

[Year 2 reports (and subsequent years for smaller reporting companies) during the temporary transition period:

If the registrant manufactures products or contracts for products to be manufactured that are identified as DRC conflict undeterminable, the registrant is required to disclose the steps it has taken or intends to take since the end of the period covered in the most recent prior CMR to mitigate the risk that its necessary conflict minerals are benefitting armed groups in the DRC or an adjoining country, including any steps to improve its due diligence.]

[Regardless of whether it is required or not, registrants might wish to describe measures that they plan to take in the future.]

[If the registrant manufactures products or contracts for products to be manufactured that have not been found to be DRC conflict free, the registrant might describe the steps it has taken or intends to take in the future to reduce the risk that its necessary conflict minerals are benefitting armed groups in the DRC or an adjoining country.]

Part II. Product Description

Not Found to Be DRC Conflict Free

[The registrant might explain the context for the results of its due diligence described in Part I to provide background information relating to the determination that its products have not been found to be DRC conflict free.]

[The registrant is required to describe:

- the products that have not been found to be DRC conflict free*
- the facilities (i.e., the smelter or refinery through which the registrant's minerals passed) used to process the necessary conflict minerals in those products*
- the country of origin of the necessary conflict minerals in those products*
- the efforts to determine the mine or location of origin with the greatest possible specificity.]*

DRC Conflict Undeterminable

The DRC conflict undeterminable reporting alternative is permitted for the 2013 and 2014 reporting years (covering reports filed by May 31, 2014 and May 31, 2015), or, for smaller reporting companies, for the 2013 through 2016 reporting years. Following the expiration of the applicable period during which the DRC conflict undeterminable category may be used, the registrant will be required to describe products as not having been found to be DRC conflict free if it is unable to determine the origin of the conflict minerals in those products.

[The registrant is required to describe:

- the products determined to be DRC conflict undeterminable*
- the facilities used to process the necessary conflict minerals in those products, if known*
- the country of origin of the necessary conflict minerals in those products, if known*
- the efforts to determine the mine or location of origin with the greatest possible specificity.]*

Report on Independent Private Sector Audit, when required, might appear following the CMR.

Appendix B — Summary of the SEC Conflict Minerals Reporting Requirements by Scenario

The following table summarizes the reporting requirements by the scenarios identified in this *Heads Up*:

Scenario	A	B	C	D	E
Form SD					
Section 1 — Conflict Minerals Disclosure (heading)	helpful	helpful	helpful	helpful	helpful
Item 1.01 Conflict Minerals Disclosure and Report (heading)	required	required	required	required	required
Conflict Minerals Disclosure (heading)	required	required	required	required	required
• Determination disclosure	required	required			
• RCOI description	required				
• RCOI and due diligence description		required			
• RCOI results	required				
• RCOI and due diligence results		required			
Reference to CMR			required	required	required
Link to website	required	required	required	required	required
Section 2 — Exhibits (heading)			helpful	helpful	helpful
Item 2.01 Exhibits (heading)			required	required	required
Exhibit 1.01 Conflict Minerals Report			required	required	required
CMR					
Due Diligence (heading)			helpful	helpful	helpful
• Description of due diligence measures taken			required	required	required
• Steps taken/to be taken since prior CMR			required (yr.2)		
• Statement re: obtained an IPSA				required	required
Product Description (heading)			helpful	helpful	
• Description of products not found to be DRC conflict free or that are DRC conflict undeterminable			required	required	
• Facilities used to process the necessary conflict minerals in those products			if known	required	
• Country of origin of the necessary conflict minerals in those products			if known	required	
• Efforts to determine the mine or location of origin with the greatest possible specificity			required	required	
IPSA report				required	required

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