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Conflict Minerals Frequently Asked Questions

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CONFLICT MINERALS FREQUENTLY ASKED QUESTIONS

The U.S. Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), which was signed into law on July 21, 2010. Section 1502 of the Dodd-Frank Act is a provision related to sourcing conflict minerals. The intent of the provision is to deter — through increased transparency of companies' sourcing practices — the extreme violence and human rights violations in the Democratic Republic of Congo (DRC) and adjoining countries funded by the exploitation and trade of certain minerals. Section 1502 instructed the U.S. Securities and Exchange Commission (SEC), in consultation with the U.S. Department of State, to promulgate regulations requiring certain companies to submit annually a description of measures taken to exercise due diligence on the source and chain of custody of conflict minerals. On August 22, 2012, the SEC approved a final rule to implement Section 1502 of the Dodd-Frank Act (the "Final Rule").

A legal action was brought against the SEC on the Final Rule in October 2012 and has been working its way through the courts. On April 14, 2014, the U.S. Court of Appeals for the District of Columbia Circuit (the "Appellate Court") held that parts of the Final Rule and of Section 1502 of the Dodd-Frank Act violate the First Amendment to the extent that they require "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."'" The Appellate Court remanded the case back to the U.S. District Court for the District of Columbia for further proceedings consistent with the ruling. On April 29, 2014, the staff of the SEC Division of Corporation Finance released a statement (the "SEC statement"), in response to the Appellate Court ruling, that the SEC still expected issuers to file a new special disclosure form (Form SD) and, if applicable, a Conflict Minerals Report (CMR) required by the Final Rule on or before June 2, 2014, the due date. However, issuers were not required to identify any products as "not been found to be 'DRC conflict free'" or "DRC conflict undeterminable." Issuers may have elected to identify products as "DRC conflict free"; however, they were required to obtain an independent private sector audit (IPSA). On May 2, 2014, the SEC issued a stay of the effective date of those portions of the Final Rule that the Appellate Court deemed unconstitutional (the "SEC Stay"). On May 14, 2014, the Appellate Court rejected an emergency motion to stay the Final Rule in its entirety until the District Court addresses the Appellate Court's earlier remand order. Citing a similar judicial review underway over the constitutionality of country-of-origin meat labeling rules, on June 2, 2014, the SEC petitioned the Appellate Court for another judicial hearing to settle the lingering question of whether certain conflict minerals disclosures are constitutional.

Conflict Minerals Frequently Asked Questions addresses many questions that have arisen related to conflict minerals, the SEC's Final Rule, and its implementation. This FAQ document has been revised to incorporate the latest questions on guidance available on this topic as of August 1, 2014, including the SEC's interpretative guidance on applying the Final Rule (FAQs 13–21) issued on April 7, 2014; the guidance clarified in the SEC's April 2014 statement; and the AICPA's *Conflict Minerals Resources, Questions and Answers* released after the issuance of the FAQ document in November 2013.

Deloitte & Touche LLP is prepared to assist clients in multiple facets of addressing the Final Rule pertaining to conflict minerals.

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(1) Background of the Final Rule		
Q&A #	**Question**	**Answer**
Q&A: 1-1	Why was the Final Rule on conflict minerals put in place?	The Final Rule implements Section 1502 of the Dodd-Frank Act, which is intended to deter, through increased transparency of companies' sourcing practices, the extreme violence and human rights violations in the DRC or adjoining countries (the "covered countries") funded by the exploitation and trade of certain minerals.
Q&A: 1-2	What are conflict minerals?	The term “conflict mineral” is defined in Section 1502(e)(4) of the Dodd-Frank Act as (1) columbite-tantalite, also known as coltan (the metal ore from which tantalum is extracted); cassiterite (the metal ore from which tin is extracted); gold; wolframite (the metal ore from which tungsten is extracted); or their derivatives; or (2) any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the covered countries. Collectively, these four types of minerals are called “3TGs.” To date, the Secretary of State has not identified any further conflict minerals. If the Secretary of State modifies its list of conflict minerals, the Final Rule will automatically be updated accordingly. Conflict minerals are used in a wide range of products including, but not limited to, mobile phones, computers, digital cameras, video game consoles, jewelry, light bulbs, pipes, electronic circuits, and automobiles.
Q&A: 1-3	Do conflict minerals encompass strategic materials like the rare earth elements?	Presently, the Secretary of State has not designated any rare earth elements as a conflict mineral.
Q&A: 1-4	Which countries are considered to be “adjoining countries”?	The term “adjoining country” is defined in Section 1502(e)(1) of the Dodd-Frank Act as a country that shares an internationally-recognized border with the Democratic Republic of Congo (DRC), which presently includes Angola, Burundi, Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia.

Q&A: 1-5	Is “product” defined in the Final Rule?	The Final Rule does not define "product." Depending on the issuer's business or industry, the definition of “product” may differ. For example, an issuer that is in the business of building warehouses may determine that its product is the warehouse. However, that warehouse may not be considered to be a product by an issuer that manufactures widgets in the warehouse.
Q&A: 1-6	Due to the legal action around the Final Rule, is there still a potential that the rule could be overturned?	Although the final resolution of the legal action against the Final Rule is uncertain as of August 1, 2014**,** and may be several months away, Deloitte & Touche LLP believes that it is unlikely that the lawsuit will be overturned. Rather, we believe that a recent Appellate Court decision in another First Amendment case may affect the SEC’s chances to prevail in this lawsuit. Included below is a brief history and the current status of the lawsuit. • On July 23, 2013, the U.S. District Court for the District of Columbia (the “District Court”) upheld the Final Rule on conflict minerals by rejecting a lawsuit filed by the National Association of Manufacturers, the U.S. Chamber of Commerce, and the Business Roundtable. • The plaintiffs, who challenged the Final Rule on the basis that (1) it is too costly to implement and (2) its required disclosures violate an issuer’s First Amendment rights, have appealed the District Court’s ruling and on January 7, 2014, the lawsuit to overturn the Final Rule was brought to the U.S. Court of Appeals for the District of Columbia Circuit (the “Appellate Court”) for oral arguments. • On April 14, 2014, the Appellate Court held that parts of the Final Rule and of Section 1502 of the Dodd-Frank Act violate the First Amendment to the extent that they require "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."'" The Appellate Court remanded the case back to the District Court for further proceedings consistent with the Appellate Court's opinion. • On April 29, 2014, the staff of the SEC Division of Corporation Finance released a statement, in response to the Appellate Court ruling, that the SEC still expects issuers to file a new special disclosure form (Form SD) and, if applicable, a Conflict Minerals Report (CMR) required by the Final Rule on or before the due date. However, issuers will not be required to identify any products as “not been found to be ‘DRC conflict free’” or “DRC conflict undeterminable.” Issuers may elect to identify products as “DRC conflict free”; however, they would be required to obtain an independent private sector audit (IPSA) (see Q&A: 1-9). • On May 2, 2014, the SEC issued a stay of the effective date of those

		portions of its conflict minerals rule that the Appellate Court deemed unconstitutional. On May 14, 2014, the Appellate Court rejected an emergency motion filed by the same business group to stay the Final Rule in its entirety until the District Court addresses the Appellate' s Court's earlier remand order. • On June 2, 2014, the SEC petitioned the Appellate Court for the D.C. Circuit for another judicial hearing to settle the question of whether certain conflict minerals disclosures are constitutional. [Amended on August 1, 2014]
Q&A: 1-7	What are the effective dates for issuers to comply with the Final Rule?	The Final Rule is effective on a calendar-year basis beginning with the calendar year ending on December 31, 2013. The Final Rule requires each issuer to provide its conflict minerals information for each calendar year, rather than its fiscal year. Therefore, an issuer that met the Final Rule's reporting requirements for the 2013 calendar year should have filed Form SD with the SEC by June 2, 2014, and should continue to do so annually by May 31 thereafter. [Amended on August 1, 2014]
Q&A: 1-8	What is the three-step process for complying with the Final Rule?	The SEC's Final Rule includes a three-step process. Step 1: The issuer must comply with the Final Rule if: • The issuer files reports with the SEC under the Exchange Act, and • 3TGs are "necessary to the functionality or production" of a product manufactured or contracted to be manufactured by the issuer. Step 2: If the Final Rule applies, the issuer must perform a reasonable country of origin inquiry (RCOI) to determine whether conflict minerals originated in the covered countries or came from recycled or scrap sources. If the issuer (1) concluded or "has reason to believe" that the conflict minerals did not originate in the covered countries or (2) concluded or reasonably believes that such conflict minerals came from recycled or scrap sources, the issuer: • Must file Form SD • Does not need to prepare a CMR or obtain an IPSA. Step 3: If the issuer has (1) affirmatively concluded or "has reason to believe" that conflict minerals may have originated in the covered countries and (2) concluded or has reason to believe that such conflict minerals may not be from recycled or scrap materials, the issuer must exercise due diligence on the source and chain of custody of conflict minerals following a nationally or internationally recognized due diligence framework and provide a CMR describing its due diligence

		measures, among other matters. • If, at any point during the exercise of that due diligence the issuer determines that its conflict minerals did not originate in the covered countries or came from recycled or scrap sources, the issuer is not required to submit a CMR or obtain an IPSA (refer to Q&A: 2-21 for reporting requirements in this situation) • Otherwise, the issuer must prepare a CMR, obtain an IPSA (in the temporary transition period, only issuers declaring "DRC conflict free" are required to obtain an IPSA, pending further action by the SEC; see Q&A 1-9 for the requirements to obtain an IPSA), and file the CMR as an exhibit to Form SD. [Amended on January 24, 2014] [Amended and renumbered on August 1, 2014 — formerly Q&A: 4-1]
Q&A: 1-9	When is an independent private sector audit (IPSA) required?	Fundamentally, under the SEC Final Rule, an IPSA is required if the issuer is required to file Form SD with a CMR (see Step 3 of Q&A: 1-8 for requirements when the CMR is required); however, the SEC Final Rule permits a temporary transition period during which an IPSA is not required if the issuer concludes for any of its products that it is unable to determine whether such products are "DRC conflict free"* (see the SEC's response to question 14 in its FAQs at: SEC FAQs — Conflict Minerals). The temporary transition period covers the first two calendar years (four years for smaller issuers) following November 13, 2012, the effective date of the Final Rule. However, if the issuer voluntarily elects to describe any of its products as "DRC conflict free" in its CMR during the temporary transition period, it will be required to obtain an IPSA. After the temporary transition period, in the absence of further clarification by the SEC, all issuers filing a CMR would be required to obtain an IPSA. _____ * "DRC conflict free" is defined under the SEC Final Rule to mean that a product does not contain conflict minerals necessary to the functionality or production of that product that directly or indirectly finance or benefit armed groups in the covered countries. [Added on August 1, 2014]

(2) Applicability of the Final Rule		
Q&A #	**Question**	**Answer**
Q&A: 2-1	Does the Final Rule apply to voluntary filers?	Yes. See the SEC's response to question 1 in its FAQs issued on May 30, 2013 at: SEC FAQs — Conflict Minerals.
Q&A: 2-2	Is the Final Rule applicable to foreign private issuers that file reports with the SEC?	Yes. The Final Rule applies to any issuer that files reports with the SEC under Section 13(a) or Section 15(d) of the Exchange Act, including foreign private issuers.
Q&A: 2-3	What are the requirements related to an acquisition by an issuer or an initial public offering (IPO)?	An issuer that acquires or otherwise obtains control over a company that manufactures or contracts to manufacture products with conflict minerals necessary to the functionality or production of those products that previously had not been obligated to provide a Form SD with respect to its conflict minerals will be permitted to delay reporting on the products manufactured by the acquired company until the end of the first reporting calendar year that begins no sooner than eight months after the effective date of the acquisition. Similarly, for an IPO, see the SEC's response to question 11 in its FAQs issued on May 30, 2013 at: SEC FAQs — Conflict Minerals.
Q&A: 2-4	If an issuer is an end-user of products but does not actually manufacture and sell products, is the Final Rule still applicable?	No. The Final Rule is applicable to all issuers that (1) file reports with the SEC under Section 13(a) or Section 15(d) of the Exchange Act and (2) conflict minerals are "necessary to the functionally or production" of a product manufactured or contracted to be manufactured by the issuer; however, an end-user of a product would not likely be considered a manufacturer. If the Final Rule is determined by an issuer to not apply, Deloitte & Touche LLP recommends that the issuer document its rationale, supporting documentation, and conclusions reached as part of its normal compliance process and to be in a position to defend its conclusion if challenged.

Q&A: 2-5	Does the Final Rule include packaging that is not essential to the use of the product?	No. See the SEC's response to question 6 in its FAQs issued on May 30, 2013 at: SEC FAQs — Conflict Minerals.
Q&A: 2-6	Does the Final Rule include the selling of used, recycled, or scrap products?	No, because the purpose of the Final Rule is to provide information about whether minerals used in manufacturing directly or indirectly financed or benefited armed groups in the covered countries. Conflict minerals from recycled or scrap sources no longer directly or indirectly finance or benefit armed groups in the covered countries. The definition of conflict minerals from recycled or scrap sources mirrors the Organisation for Economic Co-operation and Development (OECD) definition of recycled metals: "Recycled metals are reclaimed end-user or post-consumer products, or scrap processed metals created during product manufacturing. Recycled metal includes excess, obsolete, defective, and scrap metal materials which contain refined or processed metals that are appropriate to recycle in the production of tin, tantalum, tungsten and/or gold. Minerals partially processed, unprocessed or a bi-product from another ore are not recycled metals." Q&A: 4-3 provides further information related to the OECD. If the conflict minerals are from recycled or scrap sources, the issuer must file Form SD but does not need to prepare a CMR or obtain an IPSA. See Q&A: 2-21 for further discussion around the disclosure requirements of Form SD.
Q&A: 2-7	Is there a de minimis threshold allowable in scoping the reasonable country of origin inquiry (RCOI) or due diligence procedures?	The Final Rule does not include a de minimis exception. However, we would encourage issuers to consult with their outside legal counsel when considering the extent of RCOI and due diligence procedures to perform to assess the adequacy of the scoping process to perform as part of those procedures. Further, the issuer's evaluation of each of the concepts of conflict minerals, such as "necessary to the functionality or production" or "contract to manufacture" is not based on a de minimis threshold.
Q&A: 2-8	How does an issuer apply the concept of "outside the supply chain" as of January 31, 2013?	[Deleted on August 1, 2014 due to lack of ongoing relevance.]

Q&A: 2-9	In the procurement process, if an issuer specifies the product functionality or characteristics, but does not specify the materials to be used, is it considered "contract to manufacture"?	In general, the question of whether an issuer contracts to manufacture a product will depend on the degree of influence exercised by the issuer on the manufacturing of the product based on the individual facts and circumstances surrounding an issuer's business and industry. The Final Rule specifically states that an issuer that is a service provider and specifies to a manufacturer that a cell phone to be purchased for retail sale must be able to function on a certain network does not in-and-of-itself exert sufficient influence to "contract to manufacture" the phone. However, an issuer that assembles components that may contain conflict minerals is subject to the Final Rule even though it does not provide any direction to its suppliers specifying the use of minerals contained in its final product. See Q&A: 2-18 for examples of activities that would not indicate a sufficient level of influence over a third party's manufacturing process.
Q&A: 2-10	If an issuer is not a manufacturer, or does not contract to manufacture products that contain conflict minerals, does it still need to file Form SD?	No, if an issuer determines it does not manufacture or contract to manufacture products that contain conflict minerals, the issuer is not required to take any action, make any disclosures, or submit any reports under the Final Rule.
Q&A: 2-11	If an issuer concludes that conflict minerals are not necessary to the functionality or production of its products, does evidence need to be retained to support this conclusion?	If the Final Rule applies, it states that "maintenance of appropriate records may be useful in demonstrating compliance with the Final Rule." However, if the Final Rule is determined by an issuer to not apply, Deloitte & Touche LLP recommends that the issuer document its rationale, supporting documentation and conclusions reached as part of its normal compliance process, and to be in a position to defend its conclusion if challenged.
Q&A: 2-12	Does the Final Rule apply to mining-related activities in which no product is manufactured other than the actual metal mined/ extracted (i.e., the issuer is transporting minerals to a refinery)?	No. The Final Rule states that an issuer that mines, contracts to mine, or transports conflict minerals is not considered to be manufacturing or contracting to manufacture those minerals unless the issuer also engages in manufacturing, whether directly or indirectly through contract, in addition to mining.

Q&A: 2-13	Are internal products, such as pre-commercial drug products undergoing human clinical development, covered by the Final Rule?	The requirements of the Final Rule may not apply to internal products, such as pre-commercial drug products undergoing human clinical development. Accordingly, Deloitte & Touche LLP encourages issuers to consult with their outside legal counsel when considering internal products. The Final Rule does not require companies to report on the conflict minerals in materials, prototypes, and other demonstration devices containing or produced using conflict minerals that are necessary to the functionality or production of those items because they are not considering those items to be products. Once an issuer enters those items in the stream of commerce by offering them to third parties for consideration, the issuer will be required to report on any conflict minerals necessary to the functionality or production of those products.
Q&A: 2-14	If an electric utility sells light bulbs that contain conflict minerals to customers, but the utility does not manufacture the light bulbs itself, does “contract to manufacture” and “degree of influence analysis” apply?	The Final Rule applies to issuers for which conflict minerals are necessary to the functionality or production of a product contracted by that issuer to be manufactured, including conflict minerals in a component of a product. In general, the question of whether an issuer contracts to manufacture a product will depend on the degree of influence exercised by the issuer on the manufacturing of the product based on the individual facts and circumstances surrounding an issuer’s business and industry. However, an issuer is not viewed as contracting to manufacture a product if its actions involve no more than affixing its brand, marks, logo, or label to a generic product manufactured by a third party.

Q&A: 2-15	What is an issuer, such as a typical utility or energy company that does not manufacture a product (other than electricity) or that contracts with another company to construct electric transmission lines and a distribution system to be used in its operations to carry electricity, required to report, if anything?	Conflict minerals must be contained in its final product and be "necessary to the functionality or production of the product." Companies whose primary product is electricity should consider if they manufacture or contract to manufacture products, such as light bulbs, that would be subject to the Final Rule. Conflict minerals in tools or machinery used to manufacture a product do not fall under the "necessary to the production" description. Like tools and machines, indirect equipment used to produce a product, such as computers and power lines, does not bring the product that is produced with the equipment into the "necessary to the production" description. However, the issuer that manufactures or contracts to manufacture the indirect equipment would likely come within the definition of either "necessary to the functionality" or "necessary to the production" for the indirect equipment. The SEC staff stated that they would not object if issuers did not file reports on Form SD regarding the conflict minerals in the equipment that they manufacture or contract to have manufactured if that equipment is used for the service provided by the issuer and the equipment is retained by the service provider, is required to be returned to the service provider, or is intended to be abandoned by the customer following the terms of the service. See the SEC's response to question 7 in its FAQ issued on May 30, 2013 at: SEC FAQs — Conflict Minerals.
Q&A: 2-16	Does the Final Rule apply to an issuer in the services industry that uses conflict minerals as part of providing their service?	The Final Rule only applies to issuers whose products contain conflict minerals that are necessary to the functionality or production of the product manufactured. Generally, the Final Rule would not apply to service companies that do not manufacture products. However, if the service company does determine it has conflict minerals necessary to the functionality or production of a product manufactured or contracted to be manufactured, the Final Rule may apply.

Q&A: 2-17	How does the Final Rule apply to a real estate company? How does the real estate company determine if the conflict minerals are material to the function of the real estate?	If an issuer controls the general contractor but all materials are acquired already constructed and only need to be installed, there is a belief constructing a building would not be considered "servicing, maintaining, or repairing a product," but rather similar to a manufacturing process. Furthermore, the materials used to construct the building/apartment would be considered necessary to the functionality or production of the end-product. The construction of buildings/apartments would be akin to manufacturing products and as a result, the issuer would be required to comply with the Final Rule.
Q&A: 2-18	Are retailers who sell private label products subject to the Final Rule?	The issuer must consider the degree of influence it exerts over the manufacturing of the private label products. The SEC has not provided guidance to assist an issuer in determining the degree of influence over its suppliers in the manufacturing process that would require compliance. The SEC gave the following examples of activities that would not indicate a sufficient level of influence over a third party's manufacturing process: • The registrant's logo, brand, or label was merely affixed to generic products. • Involvement is limited to servicing or maintaining a third party's manufactured product. • Negotiations of contract terms are not directly related to the manufacturing of the product.
Q&A: 2-19	If an issuer believes that its products do not contain any conflict minerals and is not subject to the Final Rule, what, if any, are the required action steps?	If an issuer is not subject to the Final Rule, the issuer will not be required to take any action, make any disclosures, or submit any reports under the Final Rule. However, it is critical that all inquiries and decisions relevant to this determination (particularly if the conclusion is that the Final Rule does not apply) are adequately documented by the issuer. If the SEC or other stakeholders question an issuer's conclusion not to report (which may be more likely if the issuer operates in an industry where competitors report, or the SEC or public interest groups expect a report to be filed), this documentation will be necessary to help support that the issuer's judgments and conclusions were reasonable.

Q&A: 2-20	Is there a consensus view around who within the organization will sign the Form SD — CFO, COO, other?	The Final Rule states that the report must be signed on behalf of the issuer by an executive officer but does not state which executive officer. Which executive officer signs the Form SD is a decision only the issuer can make based on their facts and circumstances; however, Deloitte & Touche LLP recommends that the signing executive be involved in the conflict minerals process. On the basis of the June 2, 2014 filings (for calendar year 2013), Deloitte & Touche LLP noted that the CFO and Chief Legal Officer were the most common signatories. [Amended on August 1, 2014]
Q&A: 2-21	If an issuer determines as a result of its RCOI or due diligence, that its products do not contain conflict minerals from the covered countries or are from recycled or scrap sources, what level of information must be disclosed as a result of the inquiry?	When RCOI is performed by the issuer but it is determined that it is not necessary to perform due diligence measures because the issuer (1) concluded or "has reason to believe" that the conflict minerals did not originate in the covered countries or (2) concluded or reasonably believes that such conflict minerals are from recycled or scrap sources, the issuer must file Form SD, but does not need to submit a CMR or obtain an IPSA. The issuer's Form SD includes, but is not limited to, the following: Conflict Minerals Disclosure (*heading to be used in Form SD*) • Its determination based on its RCOI • A brief description of the RCOI it undertook • The results of the inquiry efforts (to demonstrate why the issuer believes that the conflict minerals did not originate in the covered countries or came from recycled or scrap sources as the basis for concluding that a CMR is not required) • A link to the issuer's website where the information is available publicly. If, after performing RCOI, the issuer concluded or "has reason to believe" that the conflict minerals (1) may have originated in the covered countries and (2) may not be from recycled or scrap sources, the issuer must exercise due diligence on the source and chain of custody of the conflict minerals. If, at any point during the exercise of that due diligence, the issuer determines that its conflict minerals did not originate in the covered countries or came from recycled or scrap sources, the issuer is not required to submit a CMR or obtain an IPSA. The issuer, however, must file Form SD. The issuer's Form SD includes, but is not limited to, the following: Conflict Minerals Disclosure (*heading to be used in Form SD*) • Its determination based on its RCOI and due diligence

		• A brief description of the RCOI and due diligence efforts it undertook • The results of the inquiry and the due diligence efforts (to demonstrate why the issuer believes that the conflict minerals did not originate in the covered countries or came from recycled or scrap sources as the basis for concluding that a CMR is not required) • A link to the issuer's website where the information is available publicly. [Amended on August 1, 2014]
Q&A: 2-22	If an issuer determines that some of its products include conflict minerals from recycled or scrap sources, which would not require the issuer to file a CMR, and other products contain conflict minerals that are not from recycled or scrap sources, which would require the issuer to file a CMR, should the issuer provide the required disclosures about its determination that the conflict minerals came from recycled or scrap sources in its Form SD or CMR?	If the issuer determines that the conflict minerals in certain of its products came from recycled or scrap sources, the issuer is required to include in the body of its Form SD the required disclosures for those conflict minerals (see Q&A: 2-21 above) but is not required to include any disclosures related to these products in the CMR that it is filing because it has other products containing conflict minerals that are not from recycled or scrap sources. The issuer, however, may still choose to include the required disclosures for conflict minerals from recycled or scrap sources in its CMR or make reference to the disclosure in the main body of Form SD. Refer to the SEC's response to question 19 in its FAQs issued on April 7, 2014 at: SEC FAQs — Conflict Minerals. [Added on August 1, 2014]

Q&A: 2-23	Should specific section headings be included in the CMR?	While the Final Rule does not require specific section headings or subheadings in the CMR, based on the Form SD instructions, an issuer is expected to include "Due Diligence" and "Product Description" section headings in its CMR. In the "Due Diligence" section, the issuer may consider including the following subheadings to provide more clarity on the topics included and facilitate the auditor's reference to what their IPSA covered: • Design of due diligence • Due diligence measures performed • IPSA • Risk mitigation/future due diligence measures. [Added on August 1, 2014]
Q&A: 2-24	Does the Final Rule require an issuer to provide a full description of the design of its due diligence framework in its CMR?	No. Refer to the SEC's response to question 21 in its FAQs issued on April 7, 2014 at: SEC FAQs — Conflict Minerals. [Added on August 1, 2014]
Q&A: 2-25	Can the issuer's due diligence measures described in the CMR be performed after the end of the calendar year?	Yes. An issuer is required to include in the CMR its due diligence measures that it had undertaken for the conflict minerals in products manufactured during the calendar year. Accordingly, the issuer's due diligence measures may need to begin before or extend beyond that calendar year to apply to conflict minerals in products manufactured during the calendar year (e.g., for products manufactured in December of the calendar year, it is likely that some due diligence measures will be performed after the end of the calendar year). Refer to the SEC's response to question 20 in its FAQs issued on April 7, 2014 at: SEC FAQs — Conflict Minerals. [Added on August 1, 2014]

Q&A: 2-26	If an issuer is unable to determine whether its products are “DRC conflict free,” what are the reporting requirements to be compliant during the temporary transition period?	The Final Rule initially required an issuer to describe its products as “not been found to be ‘DRC conflict free'" or “DRC conflict undeterminable” if the issuer was unable to determine whether its products were “DRC conflict free” during the temporary transition period. On April 14, 2014, the Appellate Court held that part of the Final Rule that requires issuers to disclose that their products have “not been found to be ‘DRC conflict free'" violates the First Amendment and remanded the case back to the District Court. The SEC subsequently responded to the Appellate Court’s ruling by stating that issuers will not be required to identify any products as “not been found to be ‘DRC conflict free’” or “DRC conflict undeterminable.” On May 2, 2014, the SEC issued a stay of the effective date of these portions of the Final Rule; however, for the first filing period, some issuers chose to still identify their products as "DRC conflict undeterminable." The SEC, however, continues to require an issuer that is unable to determine whether its products are ”DRC conflict free” to include the following disclosures in its CMR that is to be filed as an exhibit to Form SD and included on its website (for disclosures related to product descriptions for have “not been found to be ‘DRC conflict free’” products, see Q&A: 2-27 below): • A description of the measures the issuer has taken to exercise due diligence on the source and chain of custody of the conflict minerals • Steps the issuer 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 • Country of origin of the conflict minerals, if known • A description of the facilities used to process the conflict minerals, if known • Efforts to identify mine or location of origin of conflict minerals with the greatest possible specificity. [Amended and renumbered on August 1, 2014 — formerly Q&A: 2-22]

Q&A: 2-27	What impact do the Appellate Court decision and the SEC Stay have on the product disclosures required under the Final Rule?	As noted in Q&A: 2-26, as a result of the Appellate Court's decision and the SEC Stay, an issuer will not be required to identify any products as "not been found to be 'DRC conflict free'" or, during the temporary transition period, as "DRC conflict undeterminable." Issuers were never required under the Final Rule to describe their products as "DRC conflict free". Thus, identifying products according to their "DRC conflict status" is no longer required. The SEC, however, continues to require issuers that are unable to determine whether their products are "DRC conflict free" or whose products have "not been found to be 'DRC conflict free'" to provide, in their CMRs, disclosures related to country of origin, a description of the facilities used to process the conflict minerals, and efforts to identify the mine or location of origin of conflict minerals with the greatest possible specificity. In addition, although issuers are not required to identify any products as "not been found to be 'DRC conflict free'" or "DRC conflict undeterminable," Deloitte & Touche LLP believes that the issuers would still be required to specify the products for which they performed due diligence. [Added on August 1, 2014]
Q&A: 2-28	If an issuer determines that the products it manufactures or contracts to manufacture contain conflict minerals from the covered countries, but the products are "DRC conflict free," is that issuer required to file a Form SD with a CMR as an exhibit, and obtain an IPSA of the CMR?	Yes. The issuer, however, is not required to disclose the products containing those conflict minerals in its CMR or provide certain other disclosures related to product descriptions because those products are "DRC conflict free." The issuer is required to include the following disclosures in its CMR that is filed as an exhibit to Form SD and included on its website: • A description of the measures the issuer has taken to exercise due diligence on the source and chain of custody of the conflict minerals • A statement that the issuer has obtained an IPSA of the CMR • Identification of the independent private-sector auditor, if not clear • The IPSA report prepared by the auditor See the SEC's response to questions 9 and 10 in its FAQs issued on May 30, 2013 at: SEC FAQs — Conflict Minerals. [Amended and renumbered on August 1, 2014 — formerly Q&A: 2-23]

Q&A: 2-29	Is Form S-3 eligibility affected by a late Form SD filing?	No. See the SEC's response to question 12 in its FAQs issued on May 30, 2013 at: SEC FAQs — Conflict Minerals. [Renumbered on August 1, 2014 — formerly Q&A: 2-24]
Q&A: 2-30	What are the anticipated penalties or sanctions for not adhering to the disclosure requirements under the Final Rule?	While there is no penalty for using conflict minerals, issuers are still subject to the mandates of Exchange Act Section 18(a), which states that issuers that make false or misleading statements "with respect to any material fact, shall be liable to any person (not knowing that such statement was false or misleading) who, in reliance upon such statement, shall have purchased or sold a security at a price which was affected by such statement, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading." [Renumbered on August 1, 2014 — formerly Q&A: 2-25]
Q&A: 2-31	How is the Conflict Free Sourcing Initiative (CFSI) progressing in increasing the number of certified smelters and refiners?	The CFSI is a leading industry initiative commonly viewed as a means to demonstrate conformance with certain aspects of the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Second Edition* (the "OECD Due Diligence Guidance"), issued by the OECD as companies put in place conflict minerals compliance programs. Its Conflict-Free Smelter Program is one of several in region certification programs with an audit protocol to certify smelters and refiners as "DRC conflict-free," if they are not directly or indirectly financing or benefiting armed groups in the covered countries. See Q&A: 4-2 for information regarding the OECD Due Diligence Guidance. Details regarding the certification process, as well as a list of certified smelters and refiners, are available at: The Conflict Free Sourcing Initiative. [Amended on January 24, 2014] [Renumbered on August 1, 2014 — formerly Q&A: 2-26]

Q&A: 2-32	Can an issuer rely on Material Safety Data Sheets (MSDS) during its RCOI or due diligence to determine if minerals are present in its supply chain?	An issuer may use various sources of data to determine whether conflict minerals are present in their products and supply chains, which may include MSDS, bills of materials, or other information provided by suppliers. An MSDS is intended to provide workers and emergency personnel with procedures for handling or working with a substance in a safe manner, and includes information such as physical data (melting point, boiling point, flash point, etc.), toxicity, health effects, first aid, reactivity, storage, disposal, protective equipment, spill-handling procedures, etc. The sufficiency of such evidence during either the RCOI (Step 2 of the SEC's process) or due diligence (Step 3 of the SEC's process) is a determination that should be made by the issuer. See Q&A: 1-8 for a description of the SEC three-step process. [Amended and renumbered on August 1, 2014 — formerly Q&A: 2-27]

(3) Independence Considerations		
Q&A #	**Question**	**Answer**
Q&A: 3-1	Do the Government Accountability Office's (GAO) independence requirements differ if a firm performs the IPSA of the CMR as an examination attestation engagement rather than as a performance audit?	No. Refer to Question .03 of the relevant independence rules and requirements for practitioners from the American Institute of Certified Public Accountants (AICPA) Conflict Minerals — Questions and Answers: Independence. Refer to Deloitte & Touche LLP's publication — Conflict Minerals: Independent Private Sector Audit Considerations.
Q&A: 3-2	What is the difference between American Institute of Certified Public Accountants (AICPA), GAO and SEC independence requirements?	The GAO independence requirements mirror the AICPA independence rules with the exception of a documentation requirement around the Generally Accepted Government Auditing Standards (GAGAS) conceptual framework threats and safeguards analysis. GAGAS incorporates by reference the AICPA *Statements on Standards for Attestation Engagements.* Refer to Questions .02 and .03 for the relevant independence rules and requirements for practitioners from the AICPA Conflict Minerals Questions and Answers at: AICPA Conflict Minerals — Questions and Answers: Independence. The SEC independence rules are more comprehensive in nature than the AICPA and GAO independence requirements. For example, under AICPA independence rules, the financial statement auditor can perform services such as: bookkeeping, internal audit. Under SEC independence requirements, these services cannot be performed and no materiality consideration applies. Refer to AICPA and SEC Independence Rule Comparison.

Q&A: 3-3	Does being the issuer's financial statement auditor preclude a firm from performing an IPSA of that client's CMR? Conversely, does performing the IPSA of the CMR preclude a firm from auditing that client's financial statements or providing other attestation services?	No. The IPSA can be performed by the issuer's financial statement auditor as it is an attest service and not considered to impair independence. The Final Rule permits the financial statement auditor to perform the IPSA and states that it is not inconsistent with the SEC's independence requirements under Rule 2-01 of Regulation S-X. Similar to other attest services performed for issuers, the engagement to perform the IPSA would be considered a "nonaudit service" subject to the preapproval requirements of Rule 2-01(c)(7) of Regulation S-X. Whether the audit is performed by the issuer's current financial statement auditor, another public accounting firm, or other organization is a decision that should be made by the issuer. However, the current auditor already meets all independence requirements that are required for the purposes of the IPSA. The firm that does perform the IPSA must meet the independence and continuing professional education (CPE) requirements as the engagement should be performed in accordance with the requirements in GAGAS established by the GAO, commonly referred to as "Yellow Book."

Q&A: 3-4	Can Deloitte & Touche LLP perform conflict minerals advisory services for financial statement audit clients?	Yes, there are many permissible services that Deloitte & Touche LLP can provide to financial statement audit clients. Examples of permissible conflict minerals advisory services for financial statement audit clients include, but are not limited to, providing advice and recommendations on the following:
		• The issuer's conflict minerals project charter, which includes the issuer's governance structure related to its conflict minerals program
		• The issuer's conflict minerals policy
		• The issuer's IT capabilities to support a conflict minerals program
		• Criteria to evaluate technologies available for conflict minerals due diligence tracking, evaluation, and reporting
		• The conflict minerals-related supplier communication documentation created by the issuer, including:
		  • The issuer's conflict minerals supplier survey request letter
		  • The issuer's conflict minerals supplier survey
		  • The issuer's conflict minerals training program for suppliers
		  • The issuer's categorization of suppliers as high, medium, and low risk suppliers based on survey results
		• The issuer's analysis of in-scope suppliers and products
		• The issuer's conflict minerals training needs for internal personnel
		• The issuer's risk mitigation roadmap related to its conflict minerals due

		diligence process • The issuer's standard operating procedures for conflict minerals due diligence management and reporting • Potential approaches for the issuer to confirm stakeholder commitment • Potential implementation strategies on monitoring and reporting activities • The issuer's compliance and reporting process to meet SEC requirements • The issuer's draft Form SD and CMR. There are certain services that Deloitte & Touche LLP cannot perform, including among others, services that involve the design, implementation of the financial statement audit client's systems or performing management functions or making management decisions. [Amended on January 24, 2014]
(4) Independent Private Sector Audit		
Q&A #	**Question**	**Answer**
Q&A: 4-1	What is the objective of the IPSA?	The objective of the IPSA is for the auditor to express an opinion or conclusion as to (1) whether the design of the issuer's due diligence framework as set forth in the CMR, with respect to the period covered by the report, is in conformity with, in all material respects, the criteria set forth in the nationally or internationally recognized due diligence framework used by the issuer, and (2) whether the issuer's description of the due diligence measures it performed as set forth in the CMR, with respect to the period covered by the report, is consistent with the due diligence process that the issuer undertook. The IPSA, however, only covers the evaluation of the design of the issuer's due diligence framework and the due diligence measures performed that begin after the issuer's RCOI. Refer to the SEC's response to question 18 in its FAQs issued on April 7, 2014 at: SEC FAQs — Conflict Minerals. The IPSA is required to be performed in accordance with GAGAS. Either an examination attestation engagement or performance audit is permitted. [Amended and renumbered on August 1, 2014 — formerly Q&A: 4-2]

Q&A: 4-2	Is there a nationally or internationally recognized due diligence framework that an issuer must follow in conducting its due diligence procedures?	An issuer must exercise due diligence on the source and chain of custody of conflict minerals using measures that conform to a nationally or internationally recognized due diligence framework. An issuer will need to develop and document its due diligence process, using a nationally or internationally recognized due diligence framework, that includes procedures for its particular facts and circumstances. Further, the issuer's due diligence design and related activities to support its assertion should be reasonably designed and executed in good faith. The OECD Due Diligence Guidance is currently recognized as an internationally accepted framework that satisfies this requirement. It includes a five-step framework for risk-based due diligence in the mineral supply chain. The following is the link to the OECD Due Diligence Guidance: OECD Due Diligence Guidance. [Renumbered on August 1, 2014 — formerly Q&A: 4-3]
Q&A: 4-3	If the nationally or internationally recognized due diligence framework covers both RCOI and due diligence, does the IPSA evaluation of the design of the issuer's due diligence framework need to cover both?	No. Although the OECD Due Diligence Guidance used by an issuer may include procedures related to RCOI, the issuer's design of its due diligence framework is not required to include procedures related to RCOI because under the SEC Final Rule, RCOI is a series of activities separate from the due diligence process. As a result, as noted in the SEC's response to question 18 in its FAQs issued on April 7, 2014 at: SEC FAQs — Conflict Minerals and Q&A: 4-1 above, the independent private sector auditor need only opine on whether: • The design of the issuer's due diligence framework is in accordance with the portion of the nationally or internationally recognized due diligence framework beginning after its RCOI • The issuer actually performed the due diligence measures described in the report after the issuer determined it had reason to believe its conflict minerals may have originated in covered countries. [Added on August 1, 2014]
Q&A: 4-4	Does the IPSA cover all of the matters included in the CMR?	No. The IPSA is not required to cover any matter beyond the objectives described in Q&A 4-1 above and, therefore, excludes matters related to the issuer's RCOI (see Q&A: 4-3) and the completeness or reasonableness of the due diligence measures actually performed. In addition, the IPSA does not address the issuer's conclusions about: • Whether the conflict minerals are necessary to the functionality or production of the product manufactured or contracted to manufactured • Future due diligence or risk mitigation measures the issuer is committing to

		undertake • The issuer's products subject to due diligence • The source or chain of custody of conflict minerals and the suppliers thereof. Also see the SEC's response to question 17 in its FAQs issued on April 7, 2014 at: SEC FAQs — Conflict Minerals and the AICPA's responses to inquiries .03 and .06 in FAQs issued in January 2014 at: AICPA Conflict Minerals — Questions and Answers. [Added on August 1, 2014]
Q&A: 4-5	What are the similarities and differences between an examination attestation engagement and a performance audit?	There are similarities and differences between an examination attestation engagement and a performance audit. For both an examination attestation engagement and a performance audit, the auditor is required to follow the GAO CPE requirements, GAO audit firm peer review requirements, and GAO independence requirements. In addition, in both an examination attestation engagement and performance audit, auditors are required to obtain reasonable assurance that the evidence is sufficient and appropriate to support the auditors' findings and conclusions. Further, under both engagements, the nature and extent of work, documentation requirements, and level of assurance are the same; however, the procedures could vary from issuer to issuer depending on the facts and circumstances of the particular issuer. There also are a number of differences between an examination attestation engagement and a performance audit, including, but not limited to, who can perform the audit, professional standards the audit is performed under, and what is included within the report. An examination attestation engagement uses a standard form of report while a performance audit report contains more detailed audit objectives and results, including findings, conclusions, and recommendations, which include, but are not limited to: • A description of the nature and extent of the issues being reported and the extent of the work performed that resulted in the finding • Details of the performance audit, including objectives of the procedures performed in conducting the audit and results of such procedures. Deloitte & Touche LLP has published a document comparing the differences between an examination attestation engagement and a performance audit: Conflict Minerals: Independent Private Sector Audit Considerations. In addition, see the AICPA FAQs issued May 2013 at: AICPA Conflict Minerals —

		Questions and Answers. [Amended and renumbered on August 1, 2014 — formerly Q&A: 4-4]
Q&A: 4-6	Can Deloitte & Touche LLP perform the IPSA for financial statement audit clients?	Yes. As previously described in Q&A: 3-3 and Q&A 3-4, Deloitte & Touche LLP can perform the IPSA, as well as perform certain advisory services that are permitted under the applicable independence rules. The Final Rule permits the financial statement auditor to perform the IPSA and is not inconsistent with the SEC's independence requirements under Rule 2-01 of Regulation S-X. Similar to other attest services performed for issuers, the engagement to perform the IPSA would be considered a "nonaudit service" subject to the pre-approval requirements of Rule 2-01(c)(7) of Regulation S-X. For those financial statement audit clients who appoint Deloitte & Touche LLP to perform the IPSA, it is expected that financial statement audit teams will be involved in the IPSA to an extent, considering their familiarity with the issuer's operations. [Amended and renumbered on August 1, 2014 — formerly Q&A: 4-5]
Q&A: 4-7	Can Internal Audit carry out the IPSA?	Internal Audit does not meet the independence requirements of GAGAS, and therefore, cannot perform the IPSA. However, the work of Internal Audit in support of an issuer's due diligence measures may be considered by the independent private sector auditor in performing the IPSA. [Renumbered on August 1, 2014 — formerly Q&A: 4-6]

For additional information, refer to Deloitte & Touche LLP's Conflict Minerals homepage.

Additional FAQs can be found at:

- SEC Frequently Asked Questions — Conflict Minerals.
- AICPA Conflict Minerals — Questions and Answers

Questions concerning this FAQ document or the applicability of the Final Rule should be directed to the Deloitte Conflict Minerals Inquiries mailbox.

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