

Conflict minerals: Independent private sector audit considerations

On August 22, 2012, the SEC approved a final rule implementing Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Final Rule") to require 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") a description of the measures they took to exercise due diligence on the source and chain of custody of conflict minerals. 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. The registrant must obtain an independent private sector audit (IPSA) in accordance with generally accepted government auditing standards (GAGAS) if the registrant voluntarily elects to describe a product as "DRC conflict free" in its CMR¹. If an IPSA is obtained, either an examination attestation engagement or a performance audit is permitted. Registrants should consult with their SEC counsel to determine whether and when an IPSA is required.

The purpose of the IPSA is to express an opinion or conclusion as to (1) whether the design of the registrant'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 registrant, and (2) whether the registrant'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 registrant undertook.

This document provides a comparison of an examination attestation engagement and a performance audit under GAGAS and is intended to clarify the differences between such engagements.

Comparison under GAGAS	
Examination Attestation Engagement	Performance Audit
Who Performs?	
May only be performed by Certified Public Accountants (CPAs), persons working for a licensed CPA firm, or for a governmental auditing organization.	May be performed by persons other than licensed CPAs or persons working for a licensed CPA firm, such as other forms of assurance providers or consulting firms.
Each organization performing engagements in accordance with GAGAS must (1) establish and maintain a system of quality control that is designed to provide the organization with reasonable assurance that the organization and its personnel comply with professional standards and applicable legal and regulatory requirements, and (2) have an external peer review performed by reviewers independent of the organization being reviewed at least once every three years.	<ul style="list-style-type: none"> • CPA firms have an existing system of quality control and have regular peer reviews performed. • Firms other than licensed CPA firms may not have an existing system of quality control in place, or may not have had regular peer reviews of their performance audits performed in the past and will need to establish these to provide performance audit services.
Professional Standards	
GAGAS incorporates by reference the AICPA <i>Statements on Standards for Attestation Engagements</i> .	For performance audits, GAGAS does not incorporate other standards by reference, but recognizes that auditors may use, or may be required to use, other professional standards in conjunction with GAGAS.
Independence/Ethics	
Practitioners performing work under GAGAS need to maintain their professional competence through continuing professional education (CPE) ² .	Practitioners should be objective and free of conflicts of interest. Practitioners are responsible for being independent in fact and appearance when providing examination attestation or performance audit services. <ul style="list-style-type: none"> • CPA firms are required to adhere to the AICPA independence rules. • Firms other than licensed CPA firms have no such independence rules.
Fee Disclosures	
If the financial statement auditor performs the IPSA, it is considered a "non-audit service" subject to the preapproval requirements and the fees related to the IPSA would be included in the "All Other Fees" category of the principal accountant fee disclosures.	

¹ SEC Statement on the Effect of the Recent Court of Appeals Decision on the Conflict Minerals Rule

² Every two years, at least 80 hours of CPE that directly enhances the practitioner's professional proficiency to perform attestation engagements or audits should be completed. At least 24 of the 80 hours of CPE should be in subjects directly related to government auditing, the government environment, or the specific or unique environment in which the audited entity operates. At least 20 hours of the 80 should be completed in any one year of the two-year period.

Examination Attestation Engagement	Performance Audit
Reports	
<p>An examination report should include the following:</p> <ol style="list-style-type: none"> 1. Objectives, scope, and methodology of the examination attestation engagement 2. The auditors' opinion on the due diligence measures that expresses an opinion as to whether the subject matter is based on (or in conformity with) the criteria in all material respects or the assertion is presented (or fairly stated), in all material respects, based on the criteria 3. A statement about the auditors' compliance with GAGAS. <p>The following are to be included either in the examination report or in a separate report³:</p> <ol style="list-style-type: none"> 4. Significant deficiencies and material weaknesses in internal control and fraud; noncompliance with provisions of laws, regulations, contracts, and grant agreements; and abuse that have a material effect on the subject matter or an assertion about the subject matter 5. The views of management concerning the findings, conclusions, and recommendations, as well as any planned corrective actions 6. If applicable, the nature of any confidential or sensitive information omitted. 	<p>Performance audit reports can vary greatly in form, but should include the following:</p> <ol style="list-style-type: none"> 1. The objectives, scope, and methodology of the performance audit, including, but not limited to: <ul style="list-style-type: none"> • A description of the scope of the work performed and any limitations, including issues that would be relevant to likely users, so that the user could reasonably interpret the findings, conclusions, and recommendations in the report without being misled • An explanation of the relationship between the population and the items tested; identification of organizations, geographic locations, and the period covered; description of the kinds and sources of evidence • An explanation of how the completed audit work supports the audit objectives, including the evidence gathering and analysis techniques, in sufficient detail to allow knowledgeable users of the reports to understand how the practitioner addressed the audit objectives • A description of significant assumptions made in conducting the audit, comparative techniques applied, criteria used, and, when sampling significantly supports the practitioner's findings, conclusions, or recommendations, a description of the sample design an explanation of why the design was chosen, including whether the results can be projected to the intended population 2. The audit results, including findings, conclusions, and recommendations, including, but not limited to, the description of the nature and extent of the issues being reported and the extent of the work performed that resulted in the finding 3. A statement about the practitioners' compliance with GAGAS 4. Deficiencies in internal control, instances of fraud, noncompliance with provisions of laws, regulations, contracts, or grant agreements, or abuse that have occurred or are likely to have occurred and are significant within the context of the audit objectives 5. The views of management concerning the findings, conclusions, and recommendations, as well as any planned corrective actions 6. If applicable, the nature of any confidential or sensitive information omitted 7. The scope of work on internal control. <p>A practitioner reports all of the above required items in its performance audit report, and does not have the option to report separately, the items that can be reported separately for an examination attestation engagement.</p>

Reports are distributed to those charged with governance, to the appropriate company officials, and to the appropriate oversight bodies or organizations requiring the engagement. The CMR and examination or performance audit report are filed with the SEC as an attachment to Form SD.

³ If a separate report is issued for items 4–6, the examination report is required to include a reference to the separate report(s) and a statement that the separate report(s) is an integral part of a GAGAS examination attestation engagement. In certain circumstances auditors may issue a limited use report containing such information.

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