

PLEASE Don't Call Them "Red Flags"
How to Describe Your Problems with Dodd-Frank Conflict Minerals Data
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SEC did not provide a template for the Conflict Minerals Report (CMR) in the final SEC rule, or in any of the FAQs. PwC released a [conflict minerals survey in April](#). **Fewer than 10%** of respondents had drafted their SEC filings (Form SD and CMR), and 63% had not even begun. With the Year One filing date fast approaching, many companies will be scrambling to write their CMRs in the coming weeks. The author has a suggestion – both for the CMR and for ongoing professional discussions about conflict minerals.

Don't call them "red flags" unless you really mean it!

Companies have encountered many problems, such as those listed below.

- Suppliers have not responded to information requests, or responses are incomplete.
- Suppliers do not respond in a timely fashion.
- Supplier responses include misspellings, extra punctuation marks, or other obvious errors.
- Supplier responses indicate their products contain one mineral, but they include smelters known to process only a different mineral.
- Links to the company website are incorrect, or macros in the Excel file do not work.
- Suppliers' later responses do not make sense when compared with earlier responses.
- The issuer's data management system cannot produce reports desired by management, or to compare with peer companies.

It has become common for conflict minerals professionals to discuss these problems – and many more – as "red flags" that should direct the company's attention to the matter, and which implies the need for a corrective measure. The author believes this substantially overstates most of these problems, and poses risk to the issuer.

Consider two common words that have specific definitions or connotations with certain professional fields:

- **Violation:** Attorneys and compliance professionals have cautioned against using this word in a generic sense. A company may not be in compliance with a regulation – or perhaps they cannot demonstrate compliance with the regulation (in many cases, this is essentially the same thing). However, the situation is not a "violation" unless a regulatory official says so – via a written Notice of Violation or similar citation.
- **"Hazardous waste"** is defined [in the U.S.] in the Resource Conservation and Recovery Act and state statutes. Environmental and Operations professionals would not say "we do not generate hazardous waste" to an inspector, without using the term exactly as it is defined.

The [OECD Due Diligence Guidance](#) for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas ("OECD Due Diligence Guidance") includes many examples of "red flags" which are intended to alert a company that it should consider applying the OECD Due Diligence Guidance to tin, tantalum, tungsten and gold (3TG) in their supply chain. OECD's "red flags" include:

- Minerals are claimed to originate from a country that has limited known reserves, likely resources or expected production levels of the mineral in question.
- The minerals are claimed to originate from a country in which minerals from conflict-affected and high-risk areas are known to transit.
- The company's suppliers or other known upstream companies have shareholder or other interests in companies that supply minerals from or operate in one of the above-mentioned red flag locations of mineral origin and transit.
- Gold is claimed to originate from a recyclable/ scrap or mixed sources and has been refined in a country where gold from conflict-affected and high-risk areas is known or reasonably suspected to transit.
- Suppliers or other known upstream companies are known to have sourced gold from a red flag location of gold origin and transit in the last 12 months.

These are factors that indicate higher risk of funds for these minerals are finding their way to rebels, aggravating conflict, contributing to human rights abuses, and destabilizing a region.

Readers of Conflict Minerals Reports and Forms SD are likely to include Non-Governmental Organizations (NGOs), parties in the region of the Democratic Republic of Congo (DRC), analysts, and a broad array of stakeholders. Many of these parties are familiar with the OECD DD Guidance, and could interpret "red flags" as it is described there.

A misspelled smelter name or a broken macro in an Excel workbook hardly qualify as "red flags." The author encourages using more accurate terms, both in the CMR and in professional discussions:

- Non-responsive suppliers
- Incomplete or inconsistent supplier responses
- Errors likely caused by translation, but which could not be corrected or confirmed
- Data anomalies
- Problems in compiling and processing data from various, different sources
- Data and information that did not pass the issuer's quality control process

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