

Conflict Minerals Reports



.03 Objectives of the IPSA

Inquiry—What are the audit objectives in performing an independent private-sector audit (IPSA)?

Reply—The audit objectives, as stated in Rule 13p-1 (“the Rule”) of the Securities Exchange Act of 1934, are twofold:

(1) whether the design of the issuer’s due diligence framework^{*} as set forth in the Conflict Minerals Report (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 Conflict Minerals Report, with respect to the period covered by the report, is consistent with the due diligence process that the issuer undertook.

* The terms *due diligence framework* and *due diligence measures* are both used in the Rule in describing this audit objective; however, the term *framework* more accurately reflects the intent of the objective as described in the discussion of the Rule.

The first objective addresses whether the issuer’s due diligence framework is designed in conformity with the criteria set forth in a nationally or internationally recognized due diligence framework. It does not address implementation of the due diligence measures (that is, whether the due diligence measures were placed into operation) or whether the due diligence measures are operating effectively.

The second objective addresses whether the issuer actually performed the due diligence measures as they were described; in other words, did the issuer do what it said it did. It does not address whether the process undertaken and described by the issuer is consistent with the design of the issuer’s due diligence framework or the criteria set forth in the nationally or internationally recognized due diligence framework used by the issuer.

The Rule states that “an audit objective requiring an auditor to express an opinion or conclusion as to the design and description of an issuer’s due diligence measures is not as comprehensive as an audit objective requiring an auditor to express an opinion or conclusion as to the effectiveness of due diligence measures or the accuracy of conclusions in the Conflict Minerals Report. However, we believe that the audit will still be meaningful because it will provide some assurance from an independent third party that the issuer’s due diligence framework is designed in conformity with the

relevant nationally or internationally recognized due diligence framework and that the issuer actually performed the due diligence measures as they were described.”¹

.04 Relationship Between the Objectives of the IPSA

Inquiry—How do the two audit objectives relate to each other?

Reply—The two audit objectives are independent of each other. The first objective can be described as requiring the auditor to compare (A) to (B), where (A) is the design of the issuer’s due diligence framework and (B) is the criteria set forth in the nationally recognized due diligence framework used by the issuer. The second objective can be described as requiring the auditor to compare (C) to (D), where (C) is the issuer’s description of the due diligence measures it performed as described in the Conflict Minerals Report and (D) is the due diligence process that the issuer undertook. Neither (C), the issuer’s description of the due diligence measures it performed, nor (D), the due diligence process that the issuer undertook, are compared to (A), the design of the issuer’s due diligence framework, or (B), the criteria set forth in a nationally recognized due diligence framework.

.05 Criteria for IPSA as an Attestation Examination Engagement

Inquiry—AT 101, *Attest Engagements* (AICPA, *Professional Standards*), requires that to perform an attestation engagement, the practitioner must have reason to believe that the subject matter is capable of evaluation against criteria that are suitable and available to users. Is the portion of the Conflict Mineral Report that is subject to an IPSA capable of such an evaluation?

Reply—Yes. The subject matter of the first objective is the design of the issuer’s due diligence framework as set forth in CMR, which the Rule requires to be evaluated against a nationally or internationally recognized due diligence framework. A nationally or internationally recognized framework, such as the Organization of Economic Co-Operation and Development *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Supplement on Tin, Tantalum & Tungsten and Supplement on Gold* (Second Edition, *OECD Publishing, 2013*) (“OECD framework”), provides suitable and available criteria for the first reporting objective.

The second audit objective addresses whether the issuer’s description of the due diligence measures it performed as set forth in the Conflict Minerals Report, with respect to the period covered by the report, is consistent with the due diligence process that the issuer undertook. Thus, the criterion is whether the issuer’s description of its measures is consistent with the measures undertaken. The issuer’s description of the due diligence measures performed can be evaluated for consistency with the due diligence process the issuer undertook if competent persons using the same description would obtain materially similar evaluations.

AT 101 requires that criteria must be suitable and available. Evaluating the suitability of the description most efficiently occurs prior to testing of whether the description is consistent with what the entity actually did. In order for the description of the due diligence measures performed to be suitable, the entity’s description must be objective, measurable, complete and relevant.

- Objective means the criteria should be free from bias. The description of the due diligence measures performed in the CMR should be objective; subjective language such as *best practice* or *industry standard* would not provide suitable criteria for an attestation engagement.
- Measurable means the criteria should permit reasonably consistent measurements of the subject matter; in this context, the words used in the description of the due diligence measures performed in the CMR need to be precise and specific, not vague or subjective in order for the description to provide suitable criteria for an attestation engagement. Inappropriate description of procedures performed would include adjectives such as *some*, *reasonable*, *substantive*, or *exhaustive*, or phrases such as *to the best of our efforts*.

¹Rule 13p-1 of the Securities Exchange Act of 1934, page 284-285.

- Completeness means that relevant factors that would alter a conclusion about the subject matter are not omitted; in this context, it is not possible for relevant factors to be omitted from the description of the due diligence measures performed that would alter the auditor's conclusion about consistency of the due diligence measures described with the due diligence process undertaken because only the procedures that are actually described will need to be evaluated.
- Relevance means the criteria should be relevant to the subject matter; in this context, the description of the due diligence measures performed should be of the due diligence measures actually performed. Measures that have been included in the design but that have not yet been implemented are not relevant to the description of due diligence measure performed.

Availability to all users is achieved through inclusion of the description in the CMR in a clear manner.

.06 Evaluations Outside the Scope of an IPSA

Inquiry—The audit objectives in the Rule address “just the design of the issuer’s due diligence measures and the issuer’s description of the due diligence measures it performed”.² What evaluations are outside the scope of an IPSA?

Reply—The Rule describes possible audit objective alternatives that were not adopted³. These alternatives included evaluations of:

- The effectiveness of the due diligence measures.
- The accuracy of the conclusions in the Conflict Mineral Report, including whether
 - the issuer’s conclusion regarding the source and chain of custody of its conflict minerals is accurate.
 - the issuer appropriately included in the report all its products described as having not been found to be “DRC conflict free”.
- Whether the results of the due diligence measures are fairly stated.
- Whether the issuer has evaluated/identified the upstream and downstream due diligence processes.

Only the portion of the CMR that describes the design of the issuer’s due diligence framework and the due diligence measures that the issuer performed is within the scope of an IPSA.

Accordingly, the auditor’s examination would not include a number of matters, including an evaluation of:

- Matters relating to the issuer’s reasonable country of origin inquiry, including the design, operating effectiveness and results thereof.
- The consistency of the due diligence process that the issuer undertook with either the design of the issuer’s due diligence framework or the nationally or internationally recognized due diligence framework used by the issuer.
- The completeness of the issuer’s description or operating effectiveness of the due diligence measures performed.
- Whether the reader can determine if the due diligence process the issuer undertook is consistent with the nationally or internationally framework used by the issuer.

As the focus of the auditor’s objectives is on the design of the issuer’s due diligence framework and the due diligence measures undertaken by the issuer, and not on the conclusions that the issuer

² Rule 13-p, page 286.

³ Rule 13-p, page 285.

drew from such procedures, the auditor's examination does not address the issuer's conclusions about:

- The conflict minerals necessary to the functionality or production of the product manufactured or contracted to manufactured.
- Which conflict minerals were "outside the supply chain" at January 31, 2013.
- The issuer's products subject to due diligence.
- The source or chain of custody of conflict minerals and the suppliers thereof.
- Whether its products were DRC conflict free, not DRC conflict free, DRC conflict free undeterminable, or not been found to be DRC conflict free.

.07 Sample Procedures for IPSA

Inquiry—In performing the IPSA, the practitioner is required to perform procedures that will accumulate sufficient evidence to restrict engagement risk to an appropriately low level. What are examples of appropriate procedures?

Reply—Appropriate procedures relating to the first objective may include, but are not limited to:

- Ask management to identify how the design of the issuer's due diligence framework is set forth in the CMR. (Note: As of December 2013, the SEC has not provided guidance on how issuers should describe the design of their due diligence framework.)
- Identifying the nationally or internationally recognized due diligence framework used as the basis for the issuer's due diligence framework. (Note: As of December 2013, the OECD framework is the only nationally or internationally recognized framework and this Q&A assumes that management will be using the OECD framework. If management has chosen another framework, appropriate procedures would include reviewing management's determination that such a framework satisfies the SEC's criteria contained in the Rule for conducting due diligence on the source and chain of custody of its conflict minerals and is nationally or internationally recognized.)
- Obtaining management's assertion that the design of the company's due diligence framework, for the period covered by the Conflict Minerals Report, conforms in all material respects to the OECD framework
- Obtaining from management documentation of the design of the issuer's due diligence framework as set forth in the Conflict Minerals Report, with respect to the period covered by the report.
- Inquiring of management how the design of their due diligence framework conforms to the OECD framework.
- Evaluating whether the design is in conformity, in all material respects, with the OECD framework.
- Obtaining management representations that the design of the due diligence framework conforms, in all material respects, to the OECD framework.

Appropriate procedures relating to the second audit objective may include, but are not limited to:

- Obtaining management's assertion that the description of the due diligence measures that the issuer performed is consistent with the due diligence process that the issuer undertook for the period covered by the Conflict Minerals Report.
- Inquiring of management as to, and inspecting documentation identifying, the specific due diligence process undertaken
- Obtaining documentation supporting the description of the reported due diligence measures disclosed or planned to be disclosed in the Conflict Minerals Report

- Performing procedures (such as inquiry, recalculation, observation, and inspection) and obtaining evidence that the description of the due diligence measures performed was consistent, in all material respects, with the due diligence process the issuer undertook. The nature and extent of the specific procedures to be performed are determined, and will vary, based on management’s description of its due diligence measures. .
- Obtaining management representations that the description of the due diligence measures it performed as set forth in the Conflict Minerals Report, with respect to the period covered by the report, is consistent, in all material respects, with the due diligence process that the issuer undertook.

.08 GAGAS CPE Requirements

Inquiry—What are the requirements for CPE under GAGAS?

Reply—The GAGAS CPE requirements are a subset of the GAGAS competence requirement. Paragraph 3.69 of the 2011 *Government Auditing Standards* (the “Yellow Book”) states that “the staff assigned to perform the audit must collectively possess adequate professional competence needed to address the audit objectives and perform the work in accordance with GAGAS.”

Paragraph 3.76 of the Yellow Book states that each auditor performing work in accordance with GAGAS should complete, every 2 years, at least 24 hours of CPE that directly relates to government auditing, the government environment or the specific or unique environment in which the audited entity operates. This paragraph also includes a requirement for 80 total hours of CPE in a two-year period. For further information about GAGAS CPE requirements, auditors may refer to paragraph 3.76 of the Yellow Book and the GAO’s *Guidance on GAGAS Requirements for Continuing Professional Education* (www.gao.gov/govaud/ybcpe2005.pdf).

.09 CPE Topics or Subjects Relevant to an IPSA

Inquiry—What topics or subjects are appropriate to fulfill the 24 hour portion of the GAGAS CPE requirements for an auditor performing an IPSA of a CMR?

Reply—Paragraph 3.77 of the Yellow Book states that “determining what subjects are appropriate for individual auditors to satisfy both the 80 and the 24 hour requirements is a matter of professional judgment to be exercised by auditors. . .” Paragraph 16 of *Guidance on GAGAS Requirements for Continuing Professional Education* provides examples of programs and activities that qualify for CPE hours, provided they are in subjects or topics that qualify as GAGAS CPE. Paragraph 18 of that document states “subjects and topics directly related to the specific or unique environment of the entity under audit may include, among others, economic, operating, technical, or regulatory developments in the specialized area in which the audited entity operates and relevant laws and regulations”. The following list provides examples of subjects that are relevant to an IPSA of a CMR:

- *Government Auditing Standards*
- AICPA Auditing Standards
- AICPA Attestation Standards
- PCAOB Auditing Standards
- SEC’s Conflict minerals rule
- Global trends in regulation of conflict minerals
- OECD Due Diligence Guidance
- Smelter certifications
- Supply chain systems

- Nature of the industry in which the entity operates

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