



REUTERS/Benoit Tessier

# Conflict Minerals: Observations from the First Year's Reports and Considerations for Next Year

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**September 18, 2014**

**Presenter:**

Michael Littenberg, Partner, *Schulte Roth & Zabel LLP*

**Moderator:**

Lauren Hakala, Senior Legal Editor, *Practical Law Capital Markets & Securities*

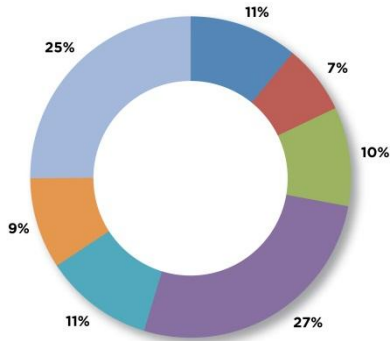
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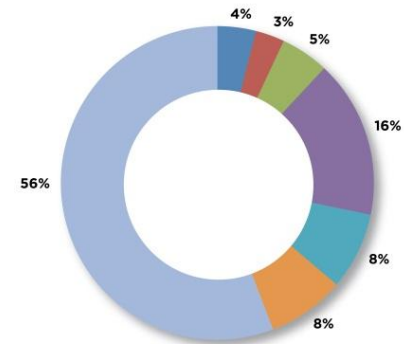
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# Who Filed...And Who Didn't

Form SD Filers



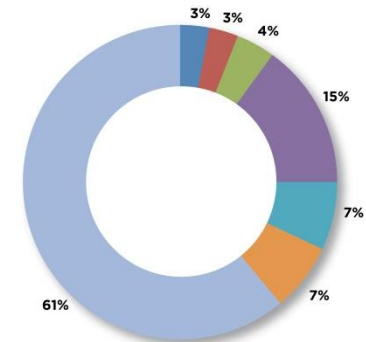
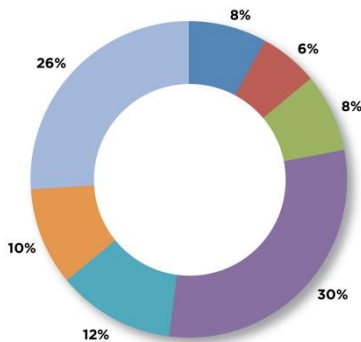
Exchange Act Registrants



By Market Capitalization

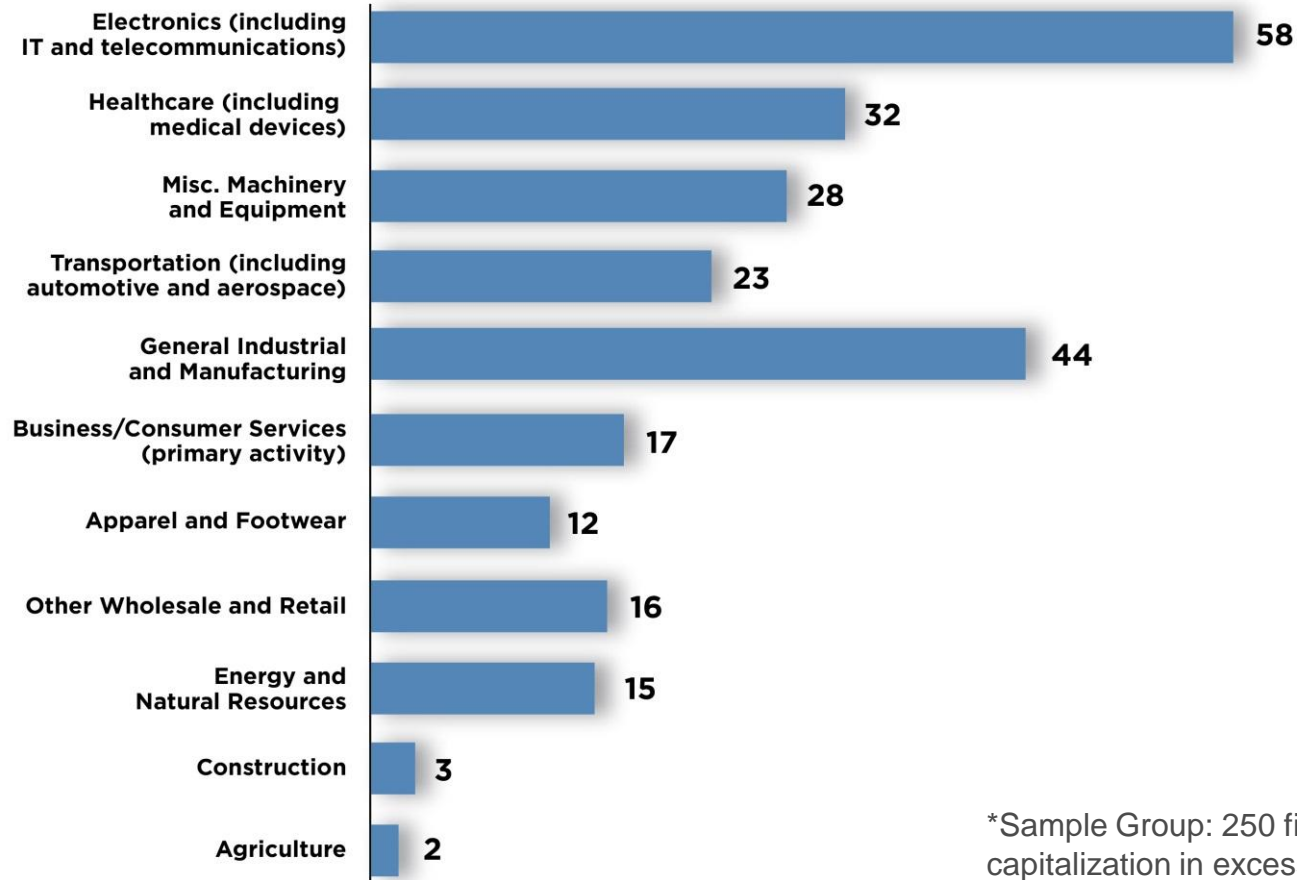
By Revenue

- > \$20B
- \$10B - \$20B
- \$5B - \$10B
- \$1B - \$5B
- \$500M - \$1B
- \$250M - \$500M
- < \$250M



# Sample Group\* Filings by Industry

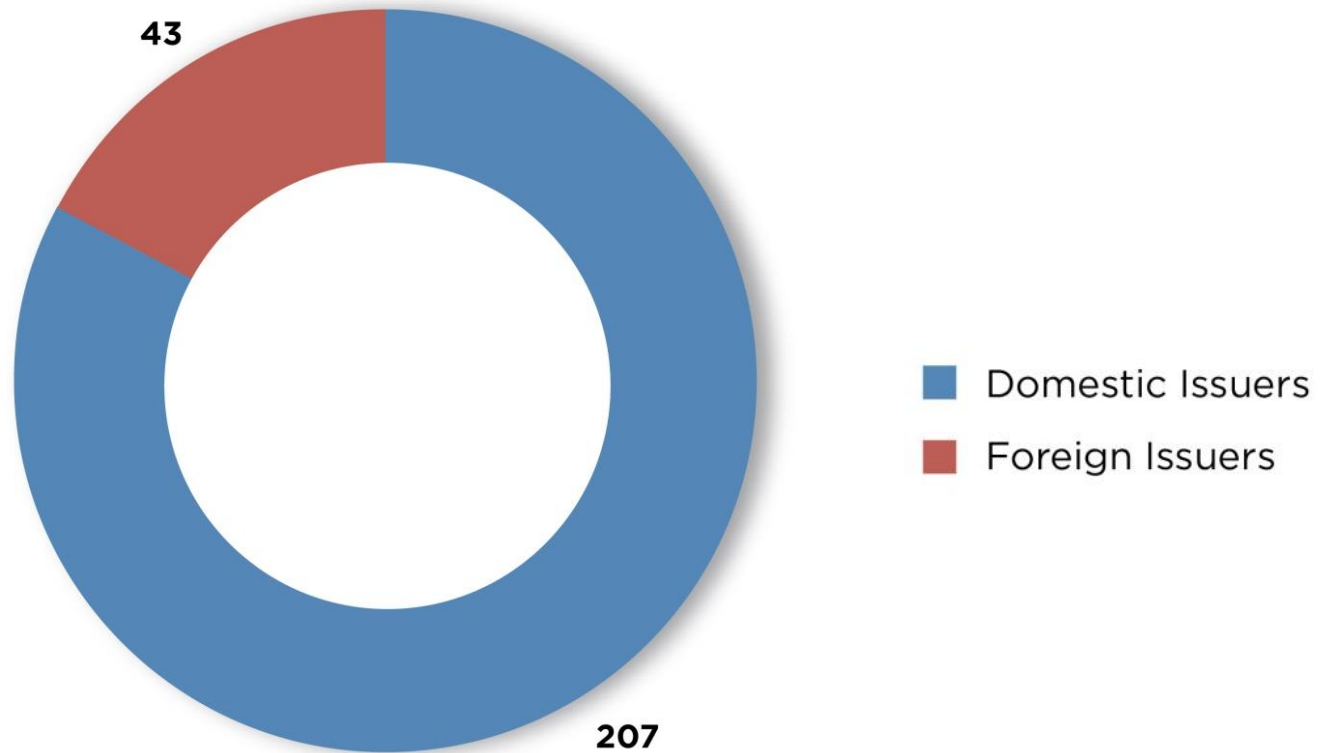
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\*Sample Group: 250 filers with a market capitalization in excess of \$250 million

# Domestic vs. Foreign Filers (Sample Group)

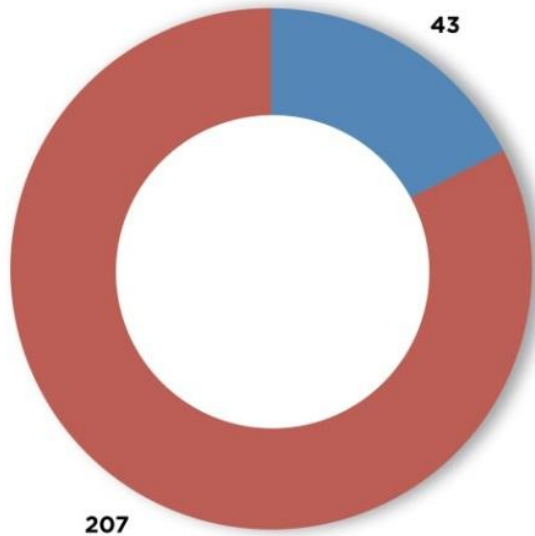
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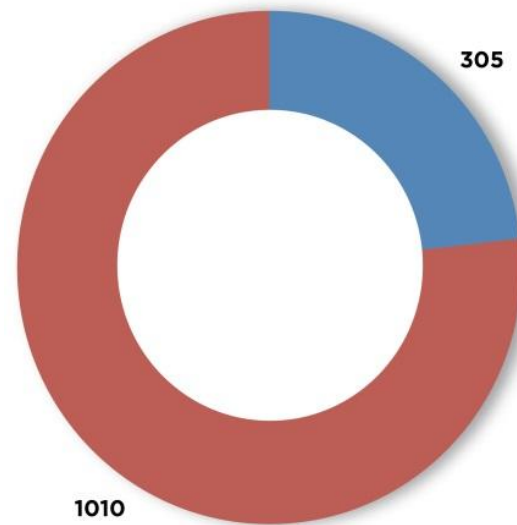
# What Was Filed?

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## Sample Group



## All Filers

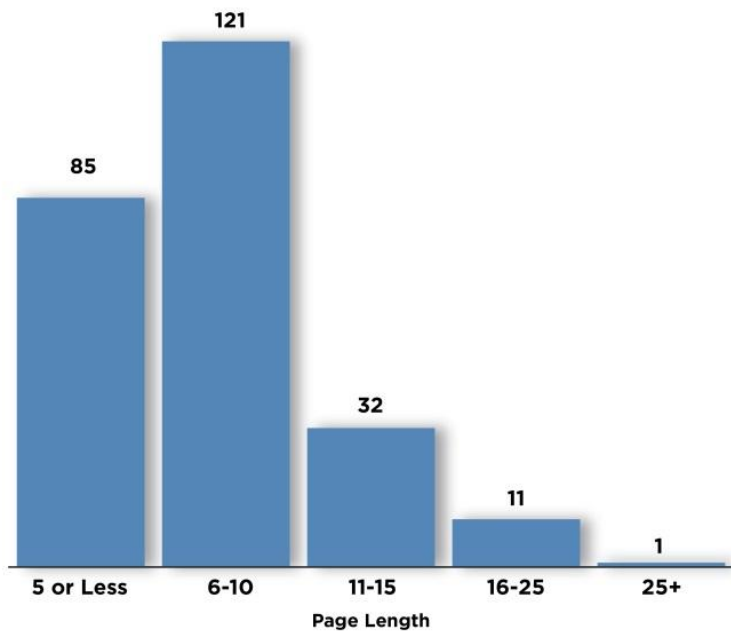


- Form SD Only
- Form SD and CMR

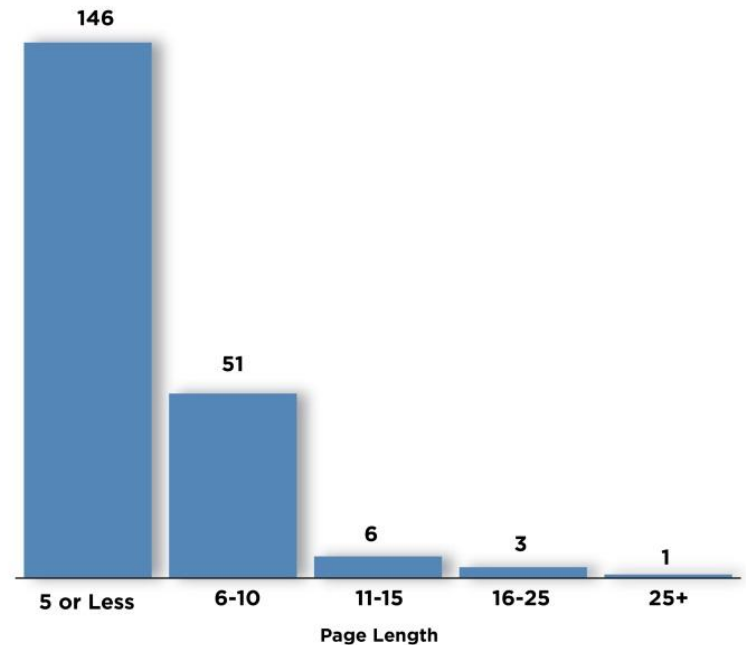
# Filing Length (Sample Group)

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## Form SD and CMR Together



## CMR Alone



# Audits

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## Calendar Year 2013 Audits

Issuer	Auditor
Intel Corp.	Ernst & Young LLP
Kemet Corp.	Douglas Hileman Consulting LLC
Koninklijke Philips NV	KPMG Accountants N.V.
Signet Jewelers Ltd.	SGS United Kingdom Ltd.

- An independent private sector audit (IPSA) is not required during a temporary transition period if at least one product may be described as "DRC conflict undeterminable"
- Pending further action, an IPSA is not required unless an issuer voluntarily elects to describe a product as "DRC conflict free" in its CMR



# Due Diligence Framework

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- Substantially all Sample Group issuers indicated in their CMRs that they utilized the OECD Guidance
- 51% tracked the OECD Guidance's five-step framework in their due diligence discussion

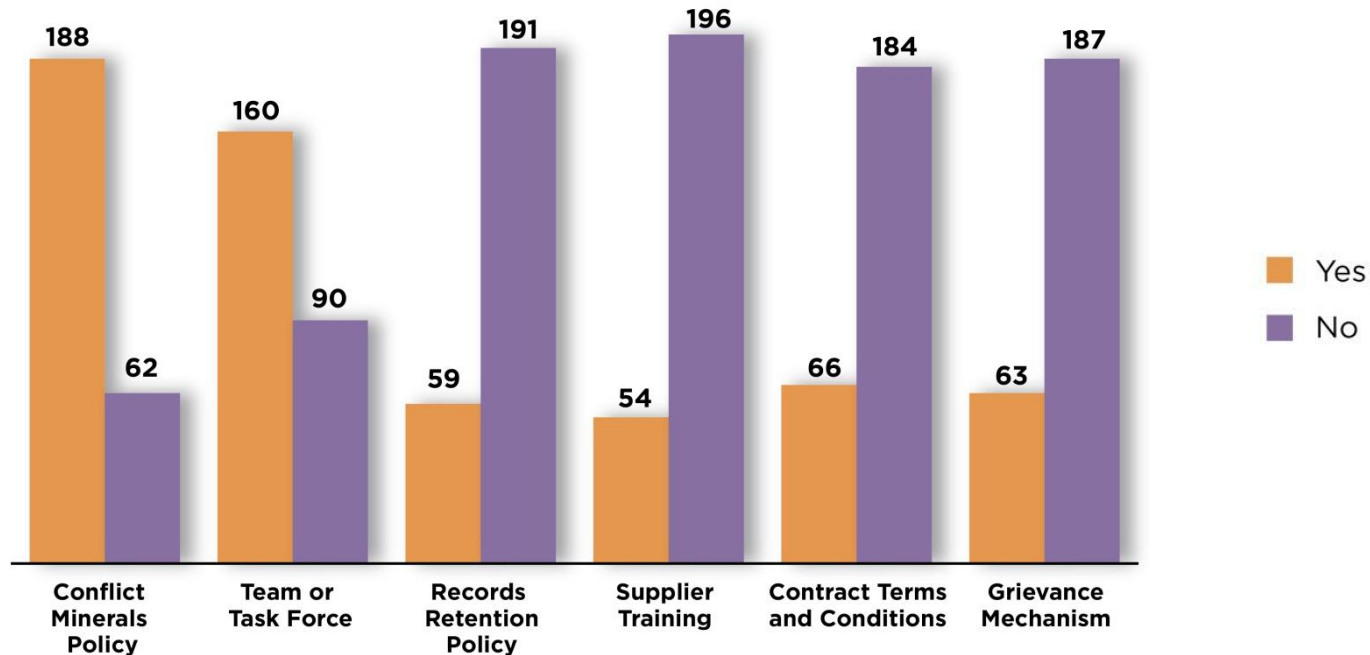
## Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas

- Establish strong company management systems
- Identify and assess risks in the supply chain
- Design and implement a strategy to respond to identified risks
- Carry out independent third-party audit of supply chain due diligence at identified points in the supply chain
- Report on supply chain due diligence

# Management Systems (Sample Group)

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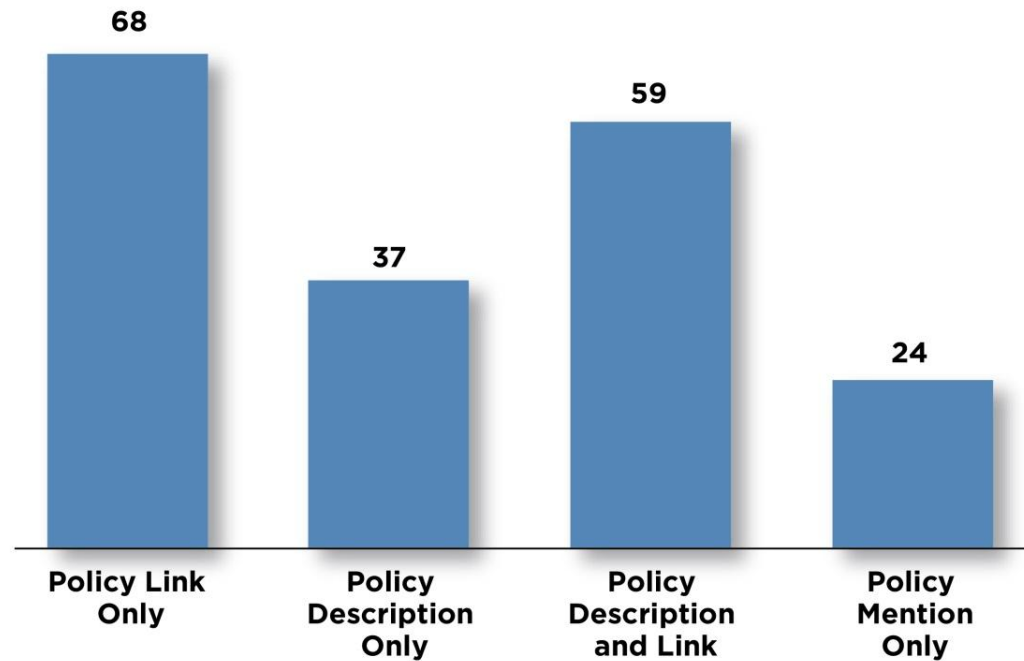
- Step 1 of the OECD Guidance provides for the establishment of strong company management systems. The Sample Group discussed the following Step 1 program elements as indicated.



## Conflict Minerals Policy (Sample Group)

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- The most frequently cited Step 1 program element was the conflict minerals policy.



# Survey Process

## Form of Survey

- 70% of the Sample Group used the CFSI Template
- 30% used a custom survey, modified Template or did not indicate

## 2014 Developments

- Template Revision 3.01
- IPC-1755



An initiative of the EICC and GeSI

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 表示言□をここから□□してください:  
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**English**

## Conflict Minerals Reporting Template (CMRT)

The purpose of this document is to collect sourcing information on tin, tantalum, tungsten and gold used in products

[Link to Terms & Conditions](#)

Mandatory fields are noted with an asterisk (\*). The information collected in this template should be updated annually. Any changes within the annual cycle should be provided to your customers

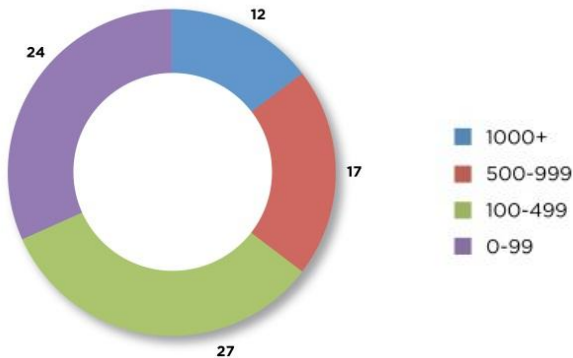
### Company Information

Company Name (*):	
Declaration Scope or Class (*):	
Description of Scope:	
Company Unique ID:	

# Suppliers Surveyed, Response Rates and Follow-up (Sample Group)

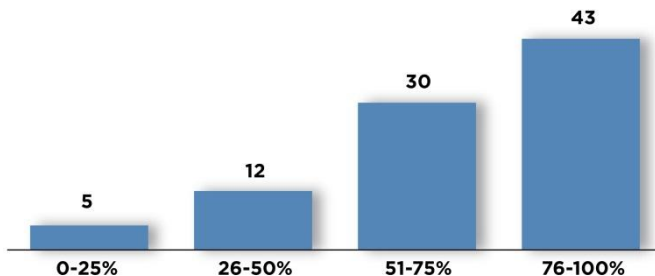
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## Number of Suppliers Surveyed



- 56% of the Sample Group discussed supplier follow-up
- 15% indicated that they reviewed SOR (smelter or refiner) information against published third-party lists of certified SORs

## Response Rate



# Risk Mitigation and Process Improvements

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- 62% of the Sample Group that filed a CMR indicated that they have devised a risk management strategy or implemented a risk management plan, or discussed other elements of Step 3 of the OECD Guidance
- 68% of the CMR filers in the Sample Group discussed or listed steps for future improvement in due diligence processes and procedures

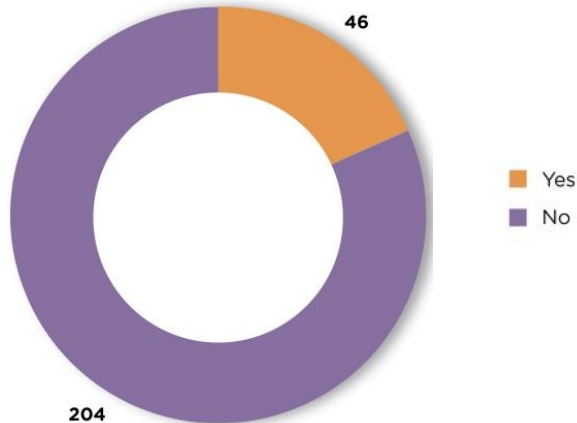
## Areas of Improvement Cited

- Further implement OECD Guidance
- Enhance supplier training
- Engage with suppliers that provided incomplete information/were not responsive
- Encourage suppliers to provide product level information
- Monitor/encourage traceability measures at suppliers
- Communicate sourcing expectations to new suppliers
- Conduct supplier audits
- Retain an IT vendor
- Encourage SORs to undergo audits
- Join the CFSI

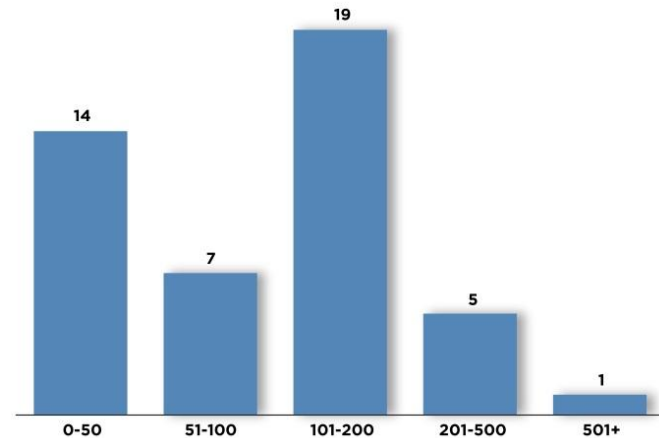
# Smelter and Refiner Information (Sample Group)

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## SOR Information Provided



## Number of SORs Indicated



## *Other Areas of SOR Disclosure*

- Country of origin information
- Certification status

## Other Filing Elements

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- RCOI discussion
- Product labels
- Product descriptions
- Signatory
- Designated contact person
- Location of website disclosure
- Safe-harbor statement



## Filing Take-Aways

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- Filings will continue to evolve, including yours
- Expect pressure from NGOs, SRIs and other constituencies to increase
- Continue to build out the OECD Guidance framework
- Most issuers will continue to wait on an audit
- Use the CFSI Conflict Minerals Reporting Template for 2014
- Consider joining the CFSI
- Focus on supplier education and training

## Ongoing Legal Challenge

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- The SEC has filed a petition for rehearing of the portion of the DC Circuit's decision in *National Association of Manufacturers v. SEC* that struck down portions of the conflict minerals rule on First Amendment grounds
- Potential timing and outcomes

## Relevant Practical Law Resource

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- *Practice Note, Conflict Minerals Diligence*
- *Conflict Minerals Disclosure Requirements Checklist*
- *Conflict Minerals Rule Challenge: Litigation Tracker*
- *Conflict Minerals Rule Compliance Toolkit*

These resources are available with a free, no-obligation trial to Practical Law.  
Visit [practicallaw.com](http://practicallaw.com) and request your free trial today.

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# Questions

# Contact Information

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Michael R. Littenberg is a partner in Schulte Roth & Zabel's Business Transactions Group and heads the firm's public companies practice. His principal areas of focus are corporate finance—across a broad range of equity and debt products—and mergers & acquisitions. As a significant part of his practice, Michael also counsels both domestic public companies and foreign private issuers and their boards, board committees, special committees, executive officers and investors in connection with ongoing compliance under the US securities laws, including under Dodd-Frank, Sarbanes-Oxley and the JOBS Act, and with exchange requirements, as well as on governance, executive compensation, FCPA and OFAC matters. His public company clients range from well-known large-cap companies to growing micro-cap companies, and his experience spans every major industry.

Michael has been especially active in advising companies on the SEC's Conflict Minerals Rule and, for more than 20 years, other supply chain matters. In addition, he frequently speaks at programs on and is the most widely quoted and published attorney in the United States on the Conflict Minerals Rule. Michael is listed in *Who's Who in Securities Law* and in *New York Super Lawyers* for securities and corporate finance and was voted by his peers to New York Super Lawyers Top 100 Lawyers in the New York Metro area (multiple years).