Responsible Mining Foundation

# Responsible Extractives Trading study:

# Summary of comments received during public comment period and main changes made to the Draft Methodology

## Introduction

### Background

With growing awareness of the importance of responsible value chains, as evidenced by the emerging expectation for accountable financial flows and non-financial disclosure, there is increasing recognition among governments, customers and consumers of the need for more transparency and traceability if we are to achieve some of the internationally agreed aims in terms of the SDGs and the Paris Climate Agreement. Lenders, investors, and businesses are also keen to avoid reputational risk.

Commodity trading plays an important role in organising the global flows of outputs from the extractive industries (minerals, metals, oil and gas). Companies that trade in these hard commodities operate globally, and many of them are private companies or private wholly-owned subsidiaries of public companies. Depending on jurisdiction and company structure, in many cases they are not subject to mandatory disclosure requirements on issues such as human rights due diligence, environmental due diligence, payments to governments, and other public interest issues. A few leading companies are recognising the need to be more transparent about ESG issues related to their trading activities and to demonstrate due diligence on issues such as human rights and the environment.

This year marks a decade since the UN Guiding Principles on Business and Human Rights were first introduced, and since then various industries and sectors have been developing the know-how and tools to respond in a meaningful way. Although some guidance on this and other matters has been emerging of late, (for example EITI, OECD, and Swiss guidance for human rights due diligence) together with related initiatives such as the responsible sourcing requirements of the London Metals Exchange (LME), there is no formal, independent measurement tool to assess the policies and practices of companies in the extractives trading sector on ESG issues.

The experience of the Responsible Mining Foundation (RMF) in the mining sector indicates that companies often lack a clear overview of society expectations on their ESG performance, and seek practical roadmaps to systematically interpret and operationalise principles and standards in their business operations. Similarly, lenders, investors, regulators, downstream customers and civil society are sometimes unsure of what questions to pose and how to realistically monitor performance. The measurement tool developed for the Responsible Extractives Trading (RET) study, based on systems thinking and society expectations, is intended to help address such knowledge gaps.

Following many requests for attention to the role of trading companies in the extractives value chains, RMF is undertaking the RET study as a comparative assessment of companies that trade in hard commodities. The companies that will be included in the study have been selected to provide a broad geographic scope (in terms of headquarters and trading operations) and a range of traded extractive commodities, as well as a mix of publicly listed, private, and state-owned enterprises as the study seeks to level the playing field across companies with different governance and ownership structures.

Each company included in the RET study has been given the opportunity to discuss with RMF the study and the assessment process. While companies are free to choose whether or not to participate in the study during the company review period, they will still be assessed on the basis publicly available information. The hierarchy of the assessment framework for the study comprises broad *thematic areas*, under which specific *topics* are addressed through one or more *indicators*, and each indicator is assessed via three *metric questions* that relate to different aspects of the intent of the indicator.

## Objectives of the RET study

The objectives of the study are to:

- Articulate what society can reasonably expect from companies trading extractive commodities, on ESG issues;
- Develop a simple evidence-based measurement tool for the purpose of assessing on the basis of publicly available information, policies and practices of companies in the extractives trading sector, with regards to ESG issues;
- Pilot the measurement tool and apply it to a selected portfolio of companies that together cover a sufficiently representative geographical footprint and share in the global trade of hard commodities;
- Through the development of detailed indicators, metric questions and guidance on kinds of relevant evidence:
    - Support awareness raising of ESG issues in extractives value chains;
    - Support capacity building and know-how for companies, regulators and others;
    - Expand the effectiveness of existing international guidance on responsible value chains;
    - Increase understanding of how to support supply chain and downstream customers on ESG issues;
- Assess the usefulness of applying such a tool biennially as a mechanism to promote and encourage continuous improvement in responsible extractives trading.

## Timeframe of the study

With the preliminary methodology of the study now finalised, RET analysts are currently undertaking the initial public domain data-gathering. A four-week company review and reporting period, to commence in October, will then give companies the opportunity to view the data collected and provide any additional responses and evidence they consider relevant. Subsequently, RET analysts will conduct the final analysis and scoring. The results of the study will be published along with the full methodology and scoring framework, in early 2021.

## Methodological considerations

The development of the RET study has taken into account issues of credibility and independence of the study and key methodological considerations that have in part determined the scope of the assessment. Some of these issues are outlined as follows.

### *'Translation' of existing guidance into assessable indicators*

The study aims to support implementation of existing guidance for commodity trading companies on issues around responsible business conduct, due diligence, human rights and transparency (including from OECD, EITI and the Swiss government). In order to be able to translate this guidance into readily assessable indicators and metric questions, to be assessed through publicly available information and to be applicable to all companies in the extractives trading sector, the study focuses on relatively 'high-level' aspects of due diligence, risk mitigation and remediation. In most cases, the study assesses whether companies have systems in place to address these issues. Evidence for these systems may include, for example, formalised company-wide norms, guidelines, or programmes.

### *Assessment of company systems*

Given the aim to limit the size of the study questionnaire (to ensure a robust and realistic methodology for this pilot study), the assessment of company practices/systems focuses largely on the existence and disclosure of such measures. Only in some cases does the study assess the scope or operationalisation of these measures. The intention is to provide basic information that will enable others to judge the adequacy of these measures.

Company systems will take different forms, depending on the size and geographic footprint of the company, and the commodities traded. Indicators have been selected to be broadly applicable in all cases and the assessment will not attempt to define what would constitute, for example, an 'effective' or 'meaningful' system. Nonetheless, the study will consider the extent to which company systems are formalised (e.g. documented operational procedures) as this is important and assessable.

### Sources of data

The study is based on publicly available data, largely from company sources. While this implies a potential limitation on the availability and reliability of data used to produce company scores, RMF will mitigate these risks via the following measures:

- Require that each score be backed up by documented evidence;
- For wholly-owned trading subsidiaries, applicable evidence will also be sought at the parent company level;
- Affirm that any information that companies provide to the assessment will be considered to be in the public domain;
- Cover multiple languages in the public domain data search;
- Identify and consult non-company sources of information, wherever possible; and
- Clarify in the report that low scores may reflect a lack of publicly available information rather than a lack of action on the part of the companies involved.

It is important to point out that the focus on publicly available data and the requirement to support each response to the RET metric questions with documented evidence, ensures the credibility of the study, obviates potential accusations of green-washing, enables the study to encourage public disclosure by companies in the extractives trading sector, and facilitates know-how and learning across the sector. In this regard, all information in the public domain and information provided to the study by companies is considered as open data. Clearly non-disclosure agreements are not helpful in this regard.

In certain cases, companies may have information they consider to be confidential which may nonetheless be useful information for the assessment process. In these cases, it will be the consideration of the company whether to share the information and hence effectively put it in the public domain. Where necessary, the analysts will accept redacted documents as evidence so companies can show only the information relevant to a given metric question.

## Comments and recommendations

Despite the unexpected disruptions that we have all encountered particularly in the first half of 2020, the Foundation wishes to thank the individuals and organisations that provided feedback and guidance, including the written comments and recommendations received during the formal public comment period of the consultative process started in 2019.

RMF acknowledges the opinions expressed by all commenters, and recognises the value of multiple perspectives in enhancing development of the methodology for the Responsible Extractives Trading study.

A limited number of formal written comments were received during the public comment period, mainly from companies and their membership associations though also from government and academia. And extensive additional feedback was received through RMF's discussions with a wide range of stakeholders including industry experts, EITI, OECD and companies that did not submit written comments.

This summary highlights the recommendations received on the Draft Methodology that was published in June 2020, and outlines the significant changes made as a result of this feedback. All comments have been considered, concerns addressed where possible, and many recommendations have been adopted, while maintaining a robust set of indicators based on society expectations of companies in the extractives trading sector.

In considering recommended changes to indicators or additional indicators, RMF has applied a standard set of criteria for selecting indicators, to ensure the robustness and practicability of the methodology, including:

- Measurability (some expectations can be hard to measure robustly and consistently, e.g. 'meaningfully', or 'thoroughly', or 'all');
- Assess-ability (some things can be measured, e.g. number of women employees, but then this might not be fairly assessable given context-specific variability);
- (For commitment indicators) addressing issues that are within the control of a company;
- (For action indicators) addressing actions that are within the control of a company;
- Reasonable to expect in terms of companies' ESG policies and practices.

Overall the methodology errs on the side of caution to ensure all of the above are respected and that the outcome is fair, consistent, and reasonable.

## Main comments received

### Rationale for the RET study

Most comments welcomed the RET study and noted its value in adding to research on extractive value chains and encouraging greater ESG disclosure by companies in the extractive trading sector. One comment noted that accessibility of the results will be enhanced by RMF's plans to publish in multiple languages.

A couple of companies included in the study voiced their doubt that the RET study would add value and one company, not a member of EITI, argued that the study was premature as the Extractive Industries Transparency Initiative (EITI) reporting framework for commodity trading companies had not yet been finalised. A couple of commenters suggested that the opening text of the Methodology report should acknowledge the positive role played by companies in the extractive trading sector.

## Overall methodology and assessment process

| Comments, Questions & Recommendations | Explanatory Notes |
|---|---|
| To what extent will the study look beyond the existence of systems/actions, to the quality of these (e.g. how meaningful they are)? | While these qualitative elements (e.g. ‘meaningful’, ‘effective’, etc.) are important to know, they are beyond the scope of the study, as outlined above. The study is intended to provide basic information on company policies and practices, that can be used by others for further research, engagement or other follow-up. |
| How does the study take into account the differences between oil and gas trading and the trading of metals and minerals? | The high-level nature of the metric questions in the RET framework mean that they are applicable to the trading of any hard commodity. |
| How does the study take into account the differences between trading companies, integrated companies and those with activities other than trading? | The study will address only trading-related activities and, in the case of companies with non-trading activities, will look for evidence that company-wide policies and practices cover the company’s trading activities. |
| The reliance on publicly available information will mean the results will not reflect the full set of measures being taken by companies . | The use of publicly available information provides credibility to the results, builds trust with investors and lenders, and allows for cross- sector learning. The public disclosure of financial and non-financial reporting is an emerging trend that is already leading to legislative enforcement in some jurisdictions. |
| The study goes beyond what EITI expects from trading companies. | Current EITI requirements and guidelines have been taken into account to align the RET study indicators with these, wherever appropriate. |
| The study should take into account information published by companies within the last five years, as in some cases matters are published once, but not with every sustainability report. | The public domain data search will consider evidence from the last 2-3 years of company reporting. Examining five years of documents for each company is not feasible, given the in-depth nature of the research (not based on AI or simple word searches). For this first baseline study, companies are welcome to provide any ‘older’ data they consider still relevant, during the company review period. |
| Request to provide companies with the scoring framework, questions and expected evidence prior to their involvement in the study. | Companies will be sent a preview copy of the full questionnaire in advance of the company review period. The detailed scoring framework will be published alongside the results. |
| What level of detail is expected? | The metric questions and the ‘kinds of evidence’ will clarify the level of detail required. |
| Questions on risk identification, assessment and mitigation should only apply to certain high-risk commodities and only where conflict-affected and high-risk areas (CAHRAs) are concerned. | The indicators on risk identification, assessment and mitigation relate to due diligence actions that any company would be expected to take, regardless of the commodity being traded or the countries involved. |

## Recommendations for additional content

Recommendations for more in-depth assessment. Recommendations were received to assess more deeply certain aspects of company commitments and actions, to look at questions of 'how' as well as 'what'. For example:

- Commitment on anti-bribery and corruption: assess who (at what level) has designed the policy (e.g. by senior management or by the compliance officer)
- Systems on anti-bribery and corruption: assess how companies define their expectations on this issue, e.g. through a Code of Conduct, through guidelines, or other means

*Response:* These details, while interesting to know, would require a more investigative approach and would not be readily assessable from publicly available information. The RET study is intended to provide basic results on company commitments and actions that can then be used by others to do more in-depth research (as mentioned above).

Recommendations for adding new elements: Comments were received suggesting that the study be expanded to include several new elements, including:

- A new thematic area on environmental responsibility and environmental due diligence in particular;
- Assessment of Board independence;
- Assessment of the seniority of the compliance officer/function;

*Response:* The following additions have been made to the RET framework:

- A new thematic area has been introduced to cover environmental due diligence. In addition, an indicator has been added regarding disclosure of the company's greenhouse gas emissions;
- A new indicator has been added to assess Board independence, complementing the existing indicator on Board accountability for ESG issues;and
- A metric question has been added to the indicator on the compliance officer/function, to assess the level of seniority.

## Changes to existing indicators

Suggestions were provided on how the study assesses certain issues, particularly in the 'Financial integrity' thematic area, as outlined below.

Disclosure of payments:

- Concern that disclosures of payments to governments and state-owned enterprises (SOEs) in non-EITI countries could be in contravention of national laws or commercial contractual agreements.
- Comment that it is not reasonable to ask for disclosure in non-EITI countries.
- Suggestion to clarify that the study is assessing disclosures in non-EITI countries specifically related to the sale of the state's share of production, and not to all trades in these countries.

*Response:* The study certainly does not expect companies to break the law and the indicators on disclosure of payments to governments take into account the regulatory environment within which companies operate. In the interests of good governance, the study encourages appropriate disclosures in both EITI and non-EITI countries. Clarification has been added to the indicator on disclosure of payments in non-EITI countries, that the disclosures relate to first trades (i.e. the sale of the state's share of production) and the metric questions for this indicator specify that they relate to disclosure of payments at an aggregated level only. In addition, the commitment indicator on disclosure of payments has been deleted as it was largely redundant, given the action indicators on the same topic.

<u>Disclosures of resource-backed loans and swap agreements</u>:

- Recommendation to specify that the study is assessing disclosure of certain aspects of the nature of these agreements, and not the actual agreements themselves.

*Response:* Clarification has been added to the indicators on disclosure of these agreements that the disclosures relate to information about these agreements rather than disclosure of the agreements themselves.

<u>Contracts disclosure</u>:

- Comment that companies cannot disclose confidential contracts and suggestion that governments should be encouraged to require disclosure by buyers and sellers

*Response:* The study does not expect companies to contravene regulatory or contractual conditions and the metric questions for the indicator on contracts disclosure specifically refer to these potential restrictions. Contracts disclosure relating to first trades is considered an important contributor to extractive sector governance.

<u>Due diligence on risks of illicit financial flows</u>:

- Question whether different regulatory frameworks on this issue have been taken into account.
- Suggestion to clarify the term 'illicit activities'.

*Response:* Assessment will not be done against any specific framework and the metric questions address this issue at a relatively general level, so the assessment is applicable to all companies. The term 'illicit activities' has been removed from the indicator to limit its scope to illicit financial flows.

<u>Lobbying</u>:

- Suggestion to clarify if the indicator on lobbying addresses lobbying through membership of industry associations, and/or payments to political parties.

*Response:* Clarification has been added to the relevant metric question, that it addresses direct lobbying, not membership of industry associations that may lobby on behalf of companies. Guidance to companies on the kinds of relevant evidence will further clarify that political payments are not considered within the scope of this indicator.

## RET Assessment Framework

The finalised framework of thematic areas, topics and indicators, incorporating the changes outlined above, is presented here.

Legend:

| [Thematic area] | | |
|---|---|---|
| **[Topic number]** | **[Topic title]** | |
| [Measurement Area] | [Indicator number] | [Indicator text] |

| A. Human Rights Due Diligence | | |
|---|---|---|
| **A.1** | **Human rights policy commitment** | |
| Commitment | A.1.1 | The company commits to respect human rights, in line with the UN Guiding Principles on Business and Human Rights |
| **A.2** | **Human rights risk identification** | |
| Action | A.2.1 | The company publicly discloses the countries from where it sources or through which it transports or trades mineral resources |
| Action | A.2.2 | The company has a system in place to identify any producing or transit country in its supply chain that should be considered as high-risk |
| **A.3** | **Human rights risk assessment, prevention and mitigation** | |
| Action | A.3.1 | The company sets expectations for its suppliers regarding prevention of their involvement in human rights abuses |
| Action | A.3.2 | The company has systems in place to identify and assess the risks of human rights abuses in its supply chain |
| Action | A.3.3 | The company has a system in place to prevent and mitigate human rights abuses in its supply chain |
| **A.4** | **Tracking and reporting on the management of human rights issues** | |
| Tracking & Reporting | A.4.1 | The company tracks its performance on supply chain human rights' risk assessment and mitigation |
| **A.5** | **Remediation of human rights abuses** | |
| Action | A.5.1 | The company has a grievance mechanism in place to enable individuals or groups to raise concerns and seek remedy for negative human rights impacts associated with its activities |
| Tracking & Reporting | A.5.2 | The company tracks and reports on the functioning and uptake of its grievance mechanism |

| B. Business Integrity | | |
|---|---|---|
| **B.1** | **Anti-bribery and corruption** | |
| Commitment | B.1.1 | The company commits to prevent all forms of bribery and corruption |
| Action | B.1.2 | The company has systems in place to operationalise its commitment to prevent and address all forms of bribery and corruption |
| Action | B.1.3 | The company has a compliance officer/function with a formal mandate and seniority to address anti-bribery and corruption |
| Tracking & Reporting | B.1.4 | The company tracks and reports annually on its performance on anti-bribery and corruption |
| **B.2** | **Board and senior management accountability** | |
| Action | B.2.1 | The company has an independent and accountable Board of Directors |
| Action | B.2.2 | The company has systems in place to hold individual board directors and senior managers accountable for responsible business conduct on ESG issues, including anti-bribery and corruption |
| **B.3** | **Lobbying practices** | |
| Action | B.3.1 | The company publicly discloses its lobbying practices |
| **B.4** | **Disclosure of corporate governance, beneficial ownership and activities** | |
| Action | B.4.1 | The company discloses information on its corporate governance and ownership |
| Action | B.4.2 | The company discloses information on its corporate structure and jurisdictions |
| Action | B.4.3 | The company discloses basic information about the scale of its business |
| Action | B.4.4 | The company discloses basic information about its greenhouse gas emissions |
| **C. Financial Integrity** | | |
| **C.1** | **Tax planning and tax transparency** | |
| Commitment | C.1.1 | The company commits to avoid aggressive tax planning |
| Action | C.1.2 | The company discloses its tax transparency approach |
| Action | C.1.3 | The company discloses the taxes it pays |
| **C.2** | **Commercial payments to governments, SOEs and transparency in the 1st trade** | |
| Action | C.2.1 | The company discloses all commercial monetary payments made to governments and SOEs in the 1st trades from EITI countries |

| | | |
|---|---|---|
| Action | C.2.2 | The company discloses all commercial monetary payments to governments and SOEs in the 1st trades from non-EITI countries |
| Action | C.2.3 | The company discloses information on all swap and resource-backed loan agreements currently in place with governments and SOEs in EITI countries |
| Action | C.2.4 | The company discloses information on all swap and resource-backed loan agreements currently in place with governments and SOEs in non-EITI countries |
| **C.3** | **Contract disclosure** | |
| Commitment | C.3.1 | The company commits to support the disclosure of the contracts it has with SOEs and governments relating to the purchase of extractive commodities |
| Action | C.3.2 | The company publicly discloses contracts it has with SOEs and governments relating to the purchase of extractive commodities |
| **C.4** | **Due diligence on risks of illicit financial flows** | |
| Action | C.4.1 | The company sets expectations and requirements for its suppliers regarding preventing and addressing their involvement in illicit financial flows |
| Action | C.4.2 | The company assesses its suppliers' compliance on preventing and addressing their involvement in illicit financial flows and acts on the results of its assessments |
| Action | C.4.3 | The company reports annually on its performance in preventing and addressing illicit financial flows in its supply chain |
| **D. Environmental Due Diligence** | | |
| **D.1** | **Environmental stewardship** | |
| Commitment | D.1.1 | The company commits to prevent, avoid and mitigate adverse environmental impacts it contributes to, directly or indirectly |
| **D.2** | **Due diligence on environmental responsibility** | |
| Action | D.2.1 | The company sets expectations for its suppliers regarding prevention, avoidance and mitigation of environmental risks |
| Action | D.2.2 | The company has systems in place to identify and assess environmental risks in its supply chain |