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Risks Posed by the Consolidated Mining Standard Initiative: A Brief for Investors

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Context

The International Energy Agency forecasts that demand for transition minerals could quadruple by 2040.¹ While advancements in circular economy systems mean new mining is not the only means to supply these minerals, the role of the mining sector remains ever present and growing. Tripling global renewable energy capacity and increasing transport electrification is a mineral-intensive effort.

Environmental stewardship and license to operate are mounting risks for the mining sector.² Of particular concern are persistent allegations of human rights violations and negative environmental impacts by the sector, with more than 800 cases documented between 2010 and 2024.³ These impacts, when unaddressed, create financial risks for those investors with exposure to the sector.

Robust standards for the mining sector are vital to ensure sustainable returns on investment. The role of rigorous, multi-stakeholder standard and certification schemes, like the Initiative for Responsible Mining Assurance (IRMA), will be key in helping to operationalize international principles and laws, improving industry-wide performance on human rights and the environment. Corporate due diligence laws, like the European Union Battery Regulation (EUBR), further boost performance through higher requirements with enforceable market and legal consequences for companies that fail to comply.

In contrast, a draft new industry-led mining standard and certification scheme, the Consolidated Mining Standard Initiative (CMSI) falls far below existing standards, norms and current industry commitments, and risks setting the industry back years. The proposed CMSI draft documents (Standard, Assurance Process, Claims Policy and Governance) represent considerable risk for investors.

The Consolidated Mining Standard Initiative (CMSI) is an effort by the Copper Mark, the International Council on Mining and Metals (ICMM), the Mining Association of Canada's Towards Sustainable Mining (TSM) and the World Gold Council to combine their separate, voluntary mining standards into one global mining standard and certification scheme.

Following a first public consultation in 2024, and according to the CMSI public communications, another public consultation period will take place in 2025, with the goal to finalize all documents by the end of the year. The first proposed draft documents (October 2024) are available on the CMSI website.⁴

Assessments are proposed to begin in 2026. It has been discussed that mining companies currently in the TSM, WGC, Copper Mark, and ICMM systems, will have a two to three-year transition phase to adopt the standard. The consolidated standard, if finalized, could be available for implementation at-scale by 2029 at the earliest.

Critical Gaps in the Proposed Draft

Recent civil society analysis of the proposed draft documents for the CSMI highlights key issues with the initiative that will undermine responsible sourcing efforts and drive an industry-wide race to the bottom on the effective management of sustainability risks impacting the sector.⁵ These are:

1 Standard requirements lack sufficient detail, guidance, and consistency to enable trustworthy assurance on environmental and social performance at mine sites.

This was echoed in auditors' feedback to the draft standard.⁶ This is compounded by a proposed assurance process that does not sufficiently maintain independence and credibility of the audit process, and limited information in assurance reports.

2 Non-conformance with fundamental international laws, principles, and already agreed upon norms of responsible business conduct that are already used by the mining industry.

In particular, the proposed draft standard is misaligned with the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, the UN Declaration on the Rights of Indigenous Peoples, the Extractive Industries Transparency Initiative (EITI) Standard as well as the International Finance Corporation's (IFC) Performance Standards, among others.

Importantly, the proposed draft standard also rolls back some of the commitments made by the CMSI partners. It also lacks incentives for companies to achieve leading practice, unlike other standards such as IRMA.

In public comments on the first draft, the UN Office of the High Commissioner for Human Rights voiced, “profound concern regarding the lack of alignment between the draft consolidated mining standards and the (UN) Guiding Principles, as well as other international human rights standards” stating that it risked confusing mining companies on their human rights responsibilities and expectations and exposing businesses to potential non-compliance with national laws, regulations, and internationally recognized human rights.⁷

#3 A governance model that gives mining companies too much control over the development and application of the standard, undermining trust in the initiative, as well as accountability and scrutiny.

This also means that the initiative will be less able to self-correct and adapt as problems are discovered, circumstances change and as responsible mining practices evolve.

Risks to Investors

Below we highlight some of the glaring issues that the proposed standard and associated documents for the CMSI fall short on that represent risks to investee companies and investors. These shortcomings can increase investors exposure to, among other issues, operational disruptions, legal and regulatory costs, and reputational damage all of which represent significant financial costs.

Risk #1: The CMSI standard will create uncertainties for investors when screening new or existing investments in the mining sector for exposure to ESG-related risks, and may undermine meaningful the foundations of investor-company engagement.

The CMSI risks awarding certification of satisfactory sustainability performance to mines that continue to perpetrate serious human rights abuses, violations of the sovereignty of Indigenous Peoples, and environmental harms. This can affect clean energy transition investments and (i) threaten companies' capacity to accurately determine their exposure to ESG-risks in their upstream mineral supply chains, and (ii) require additional investor due diligence efforts to supplement the CMSI's critical gaps.

Against the backdrop of existing and incoming corporate due diligence requirements in the EU and elsewhere, the CMSI will not support regulatory alignment that will be needed by investee companies to demonstrate how they respond to exposure to human rights risks.

Risk #2: Particularly concerning is the lack of a clear and enforceable requirement for the Free, Prior and Informed Consent (FPIC) of Indigenous Peoples in the proposed draft standard.⁸

This omission falls short of standards established by the IFC Performance Standards, and diverges significantly from the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). UNDRIP and broader international human rights law explicitly require consent before project approval which the standard does not mandate. In doing so, the CMSI risks treating consent as optional rather than as a safeguard against Indigenous Peoples' rights violations.

With more than half of the world's reserves of transition minerals located near or on Indigenous Peoples' lands⁹– the risk that this translates into social conflicts with Indigenous Peoples, lasting disruption and associated operation, reputational and legal costs for mining companies and their investors, is high and increasing.

Recent examples include Southern Copper Corp's Cuajone copper mine in Peru, which faced a 52-day shutdown as a result of protests by Indigenous Peoples for rights violations.¹⁰ The company, a subsidiary of Grupo México, faced significant operational disruptions and losses exceeding \$260 million in exports^[11], and a 10% decline^[12], in its overall copper production during that period. Indigenous Peoples are also increasingly resorting to litigation, as evidenced by cases documented by BHRRC – where courts have issued stop orders.¹³ The 2023 decision of the Inter American Court of Human Rights in the case of the Fenix El Estor nickel mine in Guatemala – confirming that the mine had violated the rights of Indigenous Peoples and required mining to stop – is a case in point.¹⁴

Risk #3: The CMSI exposes investors to the risks of improper mine waste disposal and tailings dam failures.

The 2019 tailings dam failure in Brumadinho, Brazil led to 272 deaths and catastrophic pollution of hundreds of miles of watersheds. As a result, the mining company was ordered to pay \$7 billion USD in damages^[15] and faced multiple lawsuits by investors, including a case filed by the Securities and Exchange Commission (SEC)^[16] in the Eastern District of New York. Brumadinho followed on the heels of the Mariana tailings dam failure in the same region of Brazil. The mine's owners, Vale and BHP Billiton, now face the largest class action lawsuit in the history of the UK.¹⁷

The current proposed standard relies almost entirely on the Global Industry Standard for Tailings Management (GISTM). Despite industry progress in implementing the GISTM, it does not sufficiently address the risks posed by mine waste and is reported to have been co-opted by the mining industry that exerted undue influence over the drafting process.¹⁸

The proposed draft standard is also not aligned with existing requirements of financial actors. IFC Environmental, Health and Safety Guidelines on Mining related to riverine (river, lakes, and lagoons) and deep sea tailings placement (DSTP) is more rigorous than the CMSI. Already financial institutions including Standard Chartered^[19], Citigroup^[20], Credit Suisse^[21], and institutional investors such as Storebrand^[22], have issued new policies that prohibit or severely restrict financing of submarine mine waste disposal, a practice allowed by the CMSI.

Risk #4: The mining sector faces high exposure to corruption, which will only increase as the global demand for critical minerals continues to rise.²³

Transparency on contracts signed with host governments and related payment flows is essential to respond to and manage these risks, and will help toward building conducive and stable investment environments in mineral-rich countries.

Rather than committing to existing standards, the proposed draft standard falls far below what is currently global best practice:

- The proposed draft standard only includes limited requirements on contract transparency and project-level payments-to-governments disclosures, and misses entirely requirements on beneficial ownership disclosures, which are required by other standards organizations, such as the Extractive Industry Transparency Initiative (EITI) and already supported by financial institutions. [24].
- It also does not include any requirements on public country-by-country tax reporting, which is increasingly mandated across the globe [25], expected of ICMM member companies [26], and already practiced by companies such as Rio Tinto, Anglo American, Newmont, BHP and South 32;
- It is silent on responsible tax, which is included in the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, the World Gold Council's Responsible Gold Mining Principles, and the B Team responsible tax principles.

Risk #5: Beyond direct investments in the mining sector, investors are exposed to systemic supply chain risks through their investments in the renewable energy and automotive sectors, among other sectors that are significant end-users of transition minerals.

The current boom in demand will mean that avoiding sourcing from certain geographies associated with a higher degree of sustainability risks will not be possible.

Higher risks of conflict, geopolitical risks, and already low public trust in the mining sector could translate into supply chain disruptions, slowing down renewable energy and transport electrification efforts and in turn, negatively affecting returns for highly-diversified investors with long time horizons. Reliable mineral supply chains can only be responsible ones.[27]

By walking back existing norms of responsible business conduct for the mining sector, the proposed CMSI, rather than contributing to stability in mineral supply chains, further fragments the global ESG landscape and increases systemic risks resulting from supply chain disruptions.

Recommendations to investors

- Engage with investors on the Stakeholder Advisory Group and the Executives on core concerns with the proposed CMSI. In particular, this must include embedding FPIC as a non-negotiable requirement at all compliance levels.^[28] Submit these concerns and additional areas of improvement that support sustainable returns on investments in the mining sector and in mineral dependent sectors during the second public consultation.
- Raise expectations for voluntary standards to contribute to minerals supply chain stability, rather than undermine it, by issuing clear statements of support for alignment of voluntary standards in the mining sector with international law, standards and norms of responsible business conduct.
- Adopt clear requirements for the mining sector and other sectors that depend on mineral supplies, particularly for energy transition needs as part of your stewardship and investment policies, aligned with international standards and laws.
- Make clear in investor stewardship and engagement policies that investor due diligence systems will not rely on certification by voluntary standards like the CMSI that do not require compliance with international human rights norms and responsibilities, and expect their investee companies to adopt similar due diligence requirements.

Endnotes

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