

CMSI Consultation Response

Respondent Details

NAME

Chelsea Hodgkins

COUNTRY

United States

PERMISSION

Yes, CMSI can disclose my feedback, name, and organisation.

STAKEHOLDER

Non-governmental organisation (NGO) / civil society organization (CSO)

ORGANISATION

Public Citizen

COMMENTS & QUESTIONS BY DOCUMENT

QUESTION 1

Overall does the revised version of the Consolidated Standard system (including Standard, Assurance Process, Governance Model* and Claims Policy) meet your expectations for improvement relative to the original public consultation version?

Response: **1: Significantly below**

In our comment to the first public consultation of the Consolidated Mining Standard Initiative, we wrote:

We are increasingly concerned that the consolidated standard will not be changed to meet the level of rigor, credibility, or trustworthy governance to drive measurable industry progress that meaningfully improves outcomes for communities and workers.

After review of the final draft consolidated standard, our core concern remains. The lack of substantive changes between the drafts has kept the Consolidated Mining Standard as a dangerous greenwashing platform that will regress hard-fought progress in the mining sector and put communities and workers affected by mining at further risk.

The Governance Model

While we understand the governance model is not a part of the second consultation, we would like to use the opportunity to reiterate why the final version cemented corporate capture of the Consolidated Mining Standard.

Despite the changes in the final draft that brought more clarity and definition to the Board composition, there were not substantive changes that meaningfully addressed power asymmetries from the first draft.

We want to reiterate that removing the governance model from the second consultation was a rollback of previous publicly-communicated commitments that the 40-day long second public consultation would include all four components of the Initiative: the draft Standard, governance model, assurance process, and the reporting and claims policy.

This rollback removed transparency and equitable access to influencing the development of the standard's decision-making body, the most important element of the CMSI. Despite data from the CMSI's own consultation report showing the low participation from frontline communities and rights-holders, the very groups who will be most impacted by the standard, in the first public consultation period.

In the final governance model, the CMSI has created so-called “protections” by requiring positive affirmation, meaning affirmative approval by three of the four Directors in each of the four groups on the Board, when voting occurs. While it appears to mimic IRMA, there are severe remaining gaps that retain the power and influence of commercial interests over non-commercial interests and affected groups in the governance of the CMSI.

The resulting final governance model is a corporate-led and controlled mechanism to maintain the undue influence and power of the mining industry and commercial interests over affected communities and non-commercial interests.

The CMSI does not conform with true multi-stakeholder governance. Board member selection is not constituency-based, nor are there any plans for it to be.

Unlike other multistakeholder governed initiatives, including the EITI and IRMA, the CMSI does not establish stakeholder constituencies with voting power to elect their representatives to serve as Board members.

Instead, under the CMSI, the first Board will be a blend of existing members of Copper Mark’s Board and new members who will be selected by nominations sub-committees composed of stakeholder specific members of the IAG and SAG. While the final document states intentions to establish a Governance Committee, it still will not create constituency-based elections for stakeholder groups.

Election through stakeholder constituencies are necessary for a nominally “multi-stakeholder governed” body to credibly claim that its Directors in fact represent their stakeholder constituencies.

Under the CMSI governance model, directly affected groups have significantly less voting power than commercial interests. Other voluntary standards such as IRMA utilize a more fair and equitable governance system.

The composition of Stakeholder Groups in CMSI ensures full representation of mining industry interests and broad representation of commercial interests, while continuing to limit and split the representation of Indigenous Peoples, affected communities, workers, and other so-called non commercial interests.

Of the CMSI’s 16 voting Board members (groups below), less than half are clearly marked for representatives of directly affected groups, of which up to two seats could be for Indigenous peoples.

Up to six total seats could be for directly affected groups, but as of now, only four seats are guaranteed to be (those represented in the ‘Mining Stakeholders’ group). This is a stark difference from the leading voluntary mining standard, IRMA:

Under IRMA, there are six stakeholder groups with equal representation and voting power in each group. There are two voting representatives in each ‘House’ : Affected communities; Labor; Investment and Finance; NGOs; Mining Companies; and Mineral Purchasers.

Under CMSI, there are four stakeholder groups, with four voting representatives of mixed and unequal representation that make up the 16 member board. Of the 16 voting Board members (groups below), less than half are clearly marked for representatives of directly affected groups, of which up to two seats could be for Indigenous peoples. Up to six total seats could be for directly affected groups, but as of now, only four seats are guaranteed (those represented in the ‘Mining Stakeholders’ group).

The CMSI groups are:

Mining Stakeholders (one Indigenous, one labor, one social/human rights, and one environment; ‘one of the latter three seats would also ideally be Indigenous’);

Mining Companies (all mining companies);

Value Chain Companies (two consumer-facing companies such as OEMs, one standalone recycler, smelter or refiner, and a component manufacturer like a fabricator); and

Value Chain Stakeholders (this is the most ill-defined group that will be impacted by the transition of the Copper Mark into the Legal Entity of the CMSI).

Currently, there are two categories that Value Chain Stakeholder members will be chosen from: 1) International NGOs, multi-lateral organizations, multistakeholder initiatives, and academics with expertise in responsible value chains and 2) “stakeholders directly affected by midstream and downstream value chain activities who reflect social, community, environmental or labor concerns linked to midstream and downstream.”

The composition of the Value Chain Stakeholders group continues to limit the extent and type of representation by project-affected groups, as does the Mining Stakeholders group. Moreover, the lack of strict definitions for how this group will balance representation leaves too much room for industry allies with relevant experience to be put in positions of power and dominate the decision-making process.

This power imbalance is further exacerbated by the voting structure, which creates unequal veto power for the mining industry and commercial interests.

Similar to IRMA, the final governance model of the CMSI seeks to make decisions through consensus and establishes a voting procedure when consensus can't be reached.

However, their voting procedures and structure are functionally different because of imbalances of representation and power on the CMSI Board. The CMSI governance structure fundamentally misunderstands the diversity of interests contained within the category of ‘mining affected communities.’ For example, Indigenous Peoples are afforded a particular set of rights under the United Nations Declaration on the Rights of Indigenous Peoples, and at times exercising these rights can be at odds with the rights, needs, or preferences of other ‘mining affected communities’. IRMA is structured to account for the different interests between Indigenous Peoples, labor, and NGOs by giving each group veto power, while the CMSI dilutes these groups’ power:

IRMA’s requirements: Requires all houses to agree to pass. If one stakeholder group is fundamentally opposed (defined as two no votes from the same sector), the issue has to go back to the full group for more discussion and resolution.

CMSI requirements: The Board is composed of four stakeholder groups with four members each. A yes vote requires positive affirmation of all groups, defined as three out of four members in each group agreeing (70

This positive affirmation translates to a veto power whereby two votes in one group can prevent a decision from moving forward. Strong veto power can be an important tool to advance consensus-based decision making. But, in the context of the CMSI governance model, this will not be the case because of the unequal representation and power distribution between individual ‘mining affected stakeholders’ and the mining industry.

Substantial and contentious changes will be needed to bring the standard into alignment with existing best practices; but this veto power guarantees that mining interests (only 2 mining Directors needed for a veto) can easily block such material improvements. In contrast, labor, Indigenous peoples, human rights, and environment groups are unlikely to be able to stop a push from mining interests to weaken the Standard further because their representation is scattered among the voting groups, and therefore diluted.

Committees also continue power imbalance of commercial influence.

In both the IRMA and CMSI system, there are issue-specific Committees and a Board that has ultimate authority over decisions. However, there are core differences.

Under IRMA, Committees are multi-stakeholder and work on recommendations in a specific area to the Board, but cannot make decisions.

Under the CMSI, there is a Mining Committee and Value Chain Committee, each with decision making power on “their respective remits.” The mining committee will be responsible for much of the standard implementation, updates, interpretation, and so on, whereas the Value Chain

Committee, which is where the automakers would sit, is largely in charge of creating a broader value chain strategy. Under this draft, only the Mining Committee has authority and influence over the actual functioning of the standard, the assurance process, claims policy, and grievance mechanism.

Committees are multistakeholder, but not guaranteed to be equally balanced between commercial and non-commercial interests. The model creates industry echo chambers where the value chain actors (automakers, recyclers, processors, and so on) have a separate remit and decision making body from the mining companies.

V. Moreover, Committees have Board-delegated decision-making ability.

While the Board retains ultimate decision-making power, Committees' ability to make decisions on the different issue areas without full transparency or collaboration with one another gives too much opportunity for abuse of power on topics that impact various stakeholders who aren't represented in the Committees.

Finally, the CMSI muzzles Board members' ability to communicate freely and openly in public about the initiative.

Under the CMSI, the fiduciary responsibilities of Board members include limitations on their ability to communicate freely and openly. The CMSI requires Board members "speak with a unified voice when representing the Legal Entity to the community."

This hinders Board members' ability to fully represent the concerns of stakeholder groups, especially mining affected stakeholders and Indigenous peoples, who are already underrepresented in the Board composition. This is also in stark contrast to IRMA's Principles of Engagement that allow for disagreements to be made public.

The governance model will dictate the implementation of the standard, including how audits are carried out, the quality of information audits provide, and whether companies or the CMSI will meaningfully address any grievances brought forward by impacted workers or community members.

The final governance model cements the CMSI as a corporate scheme that is multi-stakeholder in name only. While additional revisions to the final standard must be made to reduce harm, the CMSI is undemocratic, opaque, and lacks rigour. For these reasons, it will not be a trustworthy standard that supports strong due diligence or improved outcomes for mining-affected communities, workers, and Indigenous Peoples.

The Standard

The standard continues to undermine international guidelines, norms and best practices. We uplift the recommendations and analysis of Performance Areas 14 and 17 from the Tallgrass Institute, cited below.

Performance Area 14: Indigenous Peoples

Recommendations on FPIC

Make explicit that FPIC requires respect for Indigenous Peoples' decisions and includes the right to give, withhold, or withdraw consent at any time, with binding procedures to pause or halt activities when consent is withheld or withdrawn. Do not allow for States to override Indigenous Peoples' decisions and companies to rely on that override to also disrespect those decisions. Ensure that FPIC applies to exploration, operation, expansion, closure, and post-closure phases.

Prohibit the use of "applicability screens" to bypass FPIC requirements. Do not allow companies to say FPIC "does not apply." If a project could affect our lands, waters, or culture, FPIC must happen without exceptions.

Require independent verification of FPIC processes, conducted by experts with Indigenous Peoples' rights competence and with the participation of the affected Indigenous Peoples themselves.

Performance Area 17: Grievance Management

Recommendations on remedy and protection

Although CMSI's Performance Area 17 refers to the UNGP effectiveness criteria, it remains generic and does not require Indigenous co-design or verification that remedies are delivered. It mentions confidentiality and protection from reprisals but does not set clear protections for Indigenous human rights defenders or gender-specific pathways. To meet international norms, CMSI must require a Remedy System with the following minimum features:

Require culturally appropriate and gender-sensitive grievance mechanisms, co-designed with Indigenous Peoples. This should include options for traditional dispute resolution with elders or councils; Indigenous women-led pathways for gender based violence and sexual harassment cases; language access; mobile/outreach channels; and the ability to choose between community-based, facility-level, or independent mechanisms.

Guarantee non-retaliation and confidential channels for complainants, including Indigenous women and Indigenous human rights defenders, with clear escalation and protection protocols.

Require time-bound remedy plans and public summaries agreed with the community, and confirm delivery and effectiveness of restitution, rehabilitation, compensation, and guarantees of non-repetition before any performance claim can be made or maintained.

The Assurance Process

The first draft of the CMSI Assurance Process had numerous flaws that undermined its integrity. Alongside global civil society groups, we noted the following in particular:

The vagueness of the standard, which would make implementation and auditing against the standard difficult and detailed audits unlikely;

That mining companies had too much control over the auditing process, notably with scoping and conducting outreach to stakeholders and the ability to select and pay the auditor directly;

The lack of guidance, oversight, and adequate accreditation of the assurance process; and

The lack of detailed public audit results.

We acknowledge improvements to this draft that grant more advanced notice to stakeholders of the assurance process and introduce requirements to maintain confidentiality and security for affected groups and rights holders that participate in the auditing process.

Still, the second draft of the Assurance Process continues to fall below requirements of a rigorous standard and assurance process that drives continual improvement.

I. The Assurance Process does not incentivize companies to move beyond 'Good Practice Level,' effectively rendering Leading Practice obsolete.

As currently written, corrective actions and areas for improvement identified during the audit are only framed to meet the Good practice level. Continual Improvement Plans are also limited to steps to achieve the Good Practice Level. Facilities wanting to be assessed against Leading Practice in a given Performance area must indicate that to the auditor.

Instead, the CMSI should require companies to work to achieve the Leading Practice Level. This at a minimum requires:

Changing all mentions throughout the text that put the ceiling on company performance at the Good Practice Level;

Requiring facilities to be audited against the Leading Practice Level for all relevant Performance Areas; and

Requiring Assurance Reports to identify opportunities for improvement necessary to achieve Leading Practice and for companies to build aligned improvement plans.

II. The assurance process also maintains company control of communication to and selection of stakeholders for interviews in the audit process, with minimal guardrails introduced.

As in the first draft, facilities and their parent companies maintain responsibility to inform affected stakeholders and rights-holders of the external assurance process and ways they can

participate. Assurance providers have the supposed discretion to directly issue the advanced notice of [...] (p. 21). But this clause does not exclude the company from notifying communities, and there is no detail on when or how assurance providers can exercise this discretion. The assurance providers' confirmed role is to contact stakeholders and rights-holders that they will interview. As we stated in our 2024 analysis in Coalition with 19 other global groups, in low-trust contexts, direct company outreach is likely to discourage workers, Indigenous Peoples and other affected community members from participating in the audit. This will impact the audit results. Instead, CMSI must require the assurance provider, not the facility or company, to issue the advanced notice to stakeholders. It should entirely remove the ability for the facility or the company to issue the advanced notice.

The performance areas of the standard (i.e., the actual standard) continue to lack adequate detail to be meaningfully implemented by companies or for them to be independently audited against it. Instead, it promotes a check box approach, which is out of alignment with OECD and UNGP requirements.

The Claims Policy

The Claims Policy has critical flaws that undermine a culture of continuous improvement and the validity of company claims.

The Claims Policy exaggerates problems created by the Assurance Process that deter companies from working to perform beyond the Good Practice Level in two key ways.

I. Ambiguous meaning around the 80

It is unclear what it means for a company to be 80

II. A problematic scoring process to determine when a company can make a public claim.

Second, the process for determining the score by which a company can make a public performance claim with the logo is problematic. Section 3.1.2.1 gives equal weight to scores that are verified by third party auditors as it does to scores that are self-reported by companies. Page 7 of the current draft states:

The aggregated score represents the progress towards the Good Practice Level and does not include the Leading Practice Level. The aggregated score may be updated following implementation of the medium-term corrective actions, if assured by the Assurance Provider, or through the self-assessment (annually).

This completely undermines the concept and practice of independent, third-party assurance. Under no conditions should company self-reported data that has not been verified by an independent assurance provider be sufficient to adjust the score that dictates a public-facing performance claim at any point in the assurance cycle. This false equivalency must be removed from the text of the Consolidated Standard.

It is also concerning to see this allowance given that within the three-year assurance cycle, two years of data are completely based on company self-assessments and these self-assessments can lead to a score adjustment. This could mean the difference between a company being able to make a claim in a three-year cycle or not.

This creates a perverse incentive for companies to falsely report or over-exaggerate their supposed improvements, undermining the legitimacy of claims made. It also disincentivizes higher performing companies to continue to perform at a high level when they receive the same type of claim as a company that may be cheating the system. Self-assessments should not be able to influence a performance claim at all.

Under the structure of the Consolidated Standard, companies are neither required nor motivated to attempt to perform beyond Good Practice. The Claims Policy and Assurance Process creates a system of mediocrity in which audits and continuous improvement plans of companies incentivize companies to reach the Good Practice Level and stop trying to go beyond it. This undermines the practice of continuous improvement.

Conclusion

For the reasons discussed above, the CMSI remains grossly inadequate and, in its current form, will be a tool for greenwashing rather than a mechanism that drives improvements to industry practices.

QUESTION 2

From your perspective, does the updated Consolidated Standard system, including Standard, Assurance Process, Governance Model* and Claims Policy meet expectations for driving performance improvement across the industry at a global scale?

Response: **1: Significantly below**

Summary of Public Citizen's comments and analysis of the final draft of the Consolidated Mining Standard

Public Citizen advances standards associated with automotive supply chains that secure the rights of Indigenous Peoples, frontline communities and workers; protect citizens and democracy from unchecked corporate power through strong, government mandated measures for corporate accountability; and advance a sustainable, fair, and fast energy transition.

Because minerals are the bedrock of electrification and decarbonization, the extent to which the mining industry's social and environmental performance aligns with the public interest is both growing in importance and matters to our future collective welfare.

In our comment to the first public consultation of the Consolidated Mining Standard Initiative, we wrote:

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II. A problematic scoring process to determine when a company can make a public claim.

Second, the process for determining the score by which a company can make a public performance claim with the logo is problematic. Section 3.1.2.1 gives equal weight to scores that are verified by third party auditors as it does to scores that are self-reported by companies. Page 7 of the current draft states:

The aggregated score represents the progress towards the Good Practice Level and does not include the Leading Practice Level. The aggregated score may be updated following implementation of the medium-term corrective actions, if assured by the Assurance Provider, or through the self-assessment (annually).

This completely undermines the concept and practice of independent, third-party assurance. Under no conditions should company self-reported data that has not been verified by an independent assurance provider be sufficient to adjust the score that dictates a public-facing performance claim at any point in the assurance cycle. This false equivalency must be removed from the text of the Consolidated Standard.

It is also concerning to see this allowance given that within the three-year assurance cycle, two years of data are completely based on company self-assessments and these self-assessments can lead to a score adjustment. This could mean the difference between a company being able to make a claim in a three-year cycle or not.

This creates a perverse incentive for companies to falsely report or over-exaggerate their supposed improvements, undermining the legitimacy of claims made. It also disincentivizes higher performing companies to continue to perform at a high level when they receive the same type of claim as a company that may be cheating the system. Self-assessments should not be able to influence a performance claim at all.

Under the structure of the Consolidated Standard, companies are neither required nor motivated to attempt to perform beyond Good Practice. The Claims Policy and Assurance Process creates a system of mediocrity in which audits and continuous improvement plans of companies incentivize companies to reach the Good Practice Level and stop trying to go beyond it. This undermines the practice of continuous improvement.

Conclusion

For the reasons discussed above, the CMSI remains grossly inadequate and, in its current form, will be a tool for greenwashing rather than a mechanism that drives improvements to industry practices.

Document: Assurance

QUESTION 1

From your perspective, does the Assurance Process meet your expectations of a robust, credible, replicable and transparent approach?

Response: **1: Significantly below**

The first draft of the CMSI Assurance Process had numerous flaws that undermined its integrity. Alongside global civil society groups, we noted the following in particular:

The vagueness of the standard, which would make implementation and auditing against the standard difficult and detailed audits unlikely;

That mining companies had too much control over the auditing process, notably with scoping and conducting outreach to stakeholders and the ability to select and pay the auditor directly;

The lack of guidance, oversight, and adequate accreditation of the assurance process; and

The lack of detailed public audit results.

We acknowledge improvements to this draft that grant more advanced notice to stakeholders of the assurance process and introduce requirements to maintain confidentiality and security for affected groups and rights holders that participate in the auditing process.

Still, the second draft of the Assurance Process continues to fall below requirements of a rigorous standard and assurance process that drives continual improvement.

I. The Assurance Process does not incentivize companies to move beyond ‘Good Practice Level,’ effectively rendering Leading Practice obsolete.

As currently written, corrective actions and areas for improvement identified during the audit are only framed to meet the Good practice level. Continual Improvement Plans are also limited to steps to achieve the Good Practice Level. Facilities wanting to be assessed against Leading Practice in a given Performance area must indicate that to the auditor.

Instead, the CMSI should require companies to work to achieve the Leading Practice Level. This at a minimum requires:

Changing all mentions throughout the text that put the ceiling on company performance at the Good Practice Level;

Requiring facilities to be audited against the Leading Practice Level for all relevant Performance Areas; and

Requiring Assurance Reports to identify opportunities for improvement necessary to achieve Leading Practice and for companies to build aligned improvement plans.

II. The assurance process also maintains company control of communication to and selection of stakeholders for interviews in the audit process, with minimal guardrails introduced.

As in the first draft, facilities and their parent companies maintain responsibility to inform affected stakeholders and rights-holders of the external assurance process and ways they can participate. Assurance providers have the supposed discretion to directly issue the advanced notice of [...] (p. 21). But this clause does not exclude the company from notifying communities, and there is no detail on when or how assurance providers can exercise this discretion. The

assurance providers' confirmed role is to contact stakeholders and rights-holders that they will interview. As we stated in our 2024 analysis in Coalition with 19 other global groups, in low-trust contexts, direct company outreach is likely to discourage workers, Indigenous Peoples and other affected community members from participating in the audit. This will impact the audit results.

Instead, CMSI must require the assurance provider, not the facility or company, to issue the advance notice to stakeholders. It should entirely remove the ability for the facility or the company to issue the advanced notice.

The performance areas of the standard (i.e., the actual standard) continue to lack adequate detail to be meaningfully implemented by companies or for them to be independently audited against it. Instead, it promotes a check box approach, which is out of alignment with OECD and UNGP requirements.

Document: Standard

QUESTION 1

Does the scope, content, and narrative style of the consolidated standard meet your individual expectations for responsible production practices?

Response: **1: Significantly below**

The standard continues to undermine international guidelines, norms and best practices. We uplift the recommendations and analysis of Performance Areas 14 and 17 from the Tallgrass Institute, cited below.

Performance Area 14: Indigenous Peoples

Recommendations on FPIC

Make explicit that FPIC requires respect for Indigenous Peoples' decisions and includes the right to give, withhold, or withdraw consent at any time, with binding procedures to pause or halt activities when consent is withheld or withdrawn. Do not allow for States to override Indigenous Peoples' decisions and companies to rely on that override to also disrespect those decisions. Ensure that FPIC applies to exploration, operation, expansion, closure, and post-closure phases.

Prohibit the use of "applicability screens" to bypass FPIC requirements. Do not allow companies to say FPIC "does not apply." If a project could affect our lands, waters, or culture, FPIC must happen without exceptions.

Require independent verification of FPIC processes, conducted by experts with Indigenous Peoples' rights competence and with the participation of the affected Indigenous Peoples themselves.

Performance Area 17: Grievance Management

Recommendations on remedy and protection

Although CMSI's Performance Area 17 refers to the UNGP effectiveness criteria, it remains generic and does not require Indigenous co-design or verification that remedies are delivered. It mentions confidentiality and protection from reprisals but does not set clear protections for Indigenous human rights defenders or gender-specific pathways. To meet international norms, CMSI must require a Remedy System with the following minimum features:

Require culturally appropriate and gender-sensitive grievance mechanisms, co-designed with Indigenous Peoples. This should include options for traditional dispute resolution with elders or councils; Indigenous women-led pathways for gender based violence and sexual harassment cases; language access; mobile/outreach channels; and the ability to choose between community-based, facility-level, or independent mechanisms.

Guarantee non-retaliation and confidential channels for complainants, including Indigenous women and Indigenous human rights defenders, with clear escalation and protection protocols.

Require time-bound remedy plans and public summaries agreed with the community, and confirm delivery and effectiveness of restitution, rehabilitation, compensation, and guarantees of non-repetition before any performance claim can be made or maintained.

QUESTION 2

Do the requirements meet your expectations for being sufficiently clear to support consistent and practical implementation and to achieve necessary performance improvement?

Response: **1: Significantly below**

Public Citizen advances standards associated with automotive supply chains that secure the rights of Indigenous Peoples, frontline communities and workers; protect citizens and democracy from unchecked corporate power through strong, government mandated measures for corporate accountability; and advance a sustainable, fair, and fast energy transition.

Because minerals are the bedrock of electrification and decarbonization, the extent to which the mining industry's social and environmental performance aligns with the public interest is both growing in importance and matters to our future collective welfare.

In our comment to the first public consultation of the Consolidated Mining Standard Initiative, we wrote:

We are increasingly concerned that the consolidated standard will not be changed to meet the level of rigor, credibility, or trustworthy governance to drive measurable industry progress that meaningfully improves outcomes for communities and workers.

After review of the final draft consolidated standard, our core concern remains. The lack of substantive changes between the drafts has kept the Consolidated Mining Standard as a dangerous greenwashing platform that will regress hard-fought progress in the mining sector and put communities and workers affected by mining at further risk.

While we understand the governance model is not a part of the second consultation, we would like to use the opportunity to reiterate why the final version cemented corporate capture of the Consolidated Mining Standard.

Despite the changes in the final draft that brought more clarity and definition to the Board composition, there were not substantive changes that meaningfully addressed power asymmetries from the first draft.

We want to reiterate that removing the governance model from the second consultation was a rollback of previous publicly-communicated commitments that the 40-day long second public consultation would include all four components of the Initiative: the draft Standard, governance model, assurance process, and the reporting and claims policy.

This rollback removed transparency and equitable access to influencing the development of the standard's decision-making body, the most important element of the CMSI. Despite data from the CMSI's own consultation report showing the low participation from frontline communities and rights-holders, the very groups who will be most impacted by the standard, in the first public consultation period.

In the final governance model, the CMSI has created so-called "protections" by requiring positive affirmation, meaning affirmative approval by three of the four Directors in each of the four groups on the Board, when voting occurs. While it appears to mimic IRMA, there are severe remaining gaps that retain the power and influence of commercial interests over non-commercial interests and affected groups in the governance of the CMSI.

The resulting final governance model is a corporate-led and controlled mechanism to maintain the undue influence and power of the mining industry and commercial interests over affected communities and non-commercial interests.

The CMSI does not conform with true multi-stakeholder governance. Board member selection is not constituency-based, nor are there any plans for it to be.

Unlike other multistakeholder governed initiatives, including the EITI and IRMA, the CMSI does not establish stakeholder constituencies with voting power to elect their representatives to serve as Board members.

Instead, under the CMSI, the first Board will be a blend of existing members of Copper Mark's Board and new members who will be selected by nominations sub-committees composed of stakeholder specific members of the IAG and SAG. While the final document states intentions to establish a Governance Committee, it still will not create constituency-based elections for stakeholder groups.

Election through stakeholder constituencies are necessary for a nominally "multi-stakeholder governed" body to credibly claim that its Directors in fact represent their stakeholder constituencies.

Under the CMSI governance model, directly affected groups have significantly less voting power than commercial interests. Other voluntary standards such as IRMA utilize a more fair and equitable governance system.

The composition of Stakeholder Groups in CMSI ensures full representation of mining industry interests and broad representation of commercial interests, while continuing to limit and split the representation of Indigenous Peoples, affected communities, workers, and other so-called non commercial interests.

Of the CMSI's 16 voting Board members (groups below), less than half are clearly marked for representatives of directly affected groups, of which up to two seats could be for Indigenous peoples.

Up to six total seats could be for directly affected groups, but as of now, only four seats are guaranteed to be (those represented in the 'Mining Stakeholders' group). This is a stark difference from the leading voluntary mining standard, IRMA:

Under IRMA, there are six stakeholder groups with equal representation and voting power in each group. There are two voting representatives in each 'House' : Affected communities; Labor; Investment and Finance; NGOs; Mining Companies; and Mineral Purchasers.

Under CMSI, there are four stakeholder groups, with four voting representatives of mixed and unequal representation that make up the 16 member board. Of the 16 voting Board members (groups below), less than half are clearly marked for representatives of directly affected groups, of which up to two seats could be for Indigenous peoples. Up to six total seats could be for directly affected groups, but as of now, only four seats are guaranteed (those represented in the 'Mining Stakeholders' group).

The CMSI groups are:

Mining Stakeholders (one Indigenous, one labor, one social/human rights, and one environment; 'one of the latter three seats would also ideally be Indigenous');

Mining Companies (all mining companies);

Value Chain Companies (two consumer-facing companies such as OEMs, one standalone recycler, smelter or refiner, and a component manufacturer like a fabricator); and

Value Chain Stakeholders (this is the most ill-defined group that will be impacted by the transition of the Copper Mark into the Legal Entity of the CMSI).

Currently, there are two categories that Value Chain Stakeholder members will be chosen from: 1) International NGOs, multi-lateral organizations, multistakeholder initiatives, and academics with expertise in responsible value chains and 2) "stakeholders directly affected by midstream and downstream value chain activities who reflect social, community, environmental or labor concerns linked to midstream and downstream."

The composition of the Value Chain Stakeholders group continues to limit the extent and type of representation by project-affected groups, as does the Mining Stakeholders group. Moreover, the lack of strict definitions for how this group will balance representation leaves too much room for industry allies with relevant experience to be put in positions of power and dominate the decision-making process.

This power imbalance is further exacerbated by the voting structure, which creates unequal veto power for the mining industry and commercial interests.

Similar to IRMA, the final governance model of the CMSI seeks to make decisions through consensus and establishes a voting procedure when consensus can't be reached.

However, their voting procedures and structure are functionally different because of imbalances of representation and power on the CMSI Board. The CMSI governance structure fundamentally misunderstands the diversity of interests contained within the category of 'mining affected communities.' For example, Indigenous Peoples are afforded a particular set of rights under the United Nations Declaration on the Rights of Indigenous Peoples, and at times exercising these rights can be at odds with the rights, needs, or preferences of other 'mining affected communities'. IRMA is structured to account for the different interests between Indigenous Peoples, labor, and NGOs by giving each group veto power, while the CMSI dilutes these groups' power:

IRMA's requirements: Requires all houses to agree to pass. If one stakeholder group is fundamentally opposed (defined as two no votes from the same sector), the issue has to go back to the full group for more discussion and resolution.

CMSI requirements: The Board is composed of four stakeholder groups with four members each. A yes vote requires positive affirmation of all groups, defined as three out of four members in each group agreeing (70

This positive affirmation translates to a veto power whereby two votes in one group can prevent a decision from moving forward. Strong veto power can be an important tool to advance consensus-based decision making. But, in the context of the CMSI governance model, this will not be the case because of the unequal representation and power distribution between individual 'mining affected stakeholders' and the mining industry.

Substantial and contentious changes will be needed to bring the standard into alignment with existing best practices; but this veto power guarantees that mining interests (only 2 mining Directors needed for a veto) can easily block such material improvements. In contrast, labor, Indigenous peoples, human rights, and environment groups are unlikely to be able to stop a push from mining interests to weaken the Standard further because their representation is scattered among the voting groups, and therefore diluted.

Committees also continue power imbalance of commercial influence.

In both the IRMA and CMSI system, there are issue-specific Committees and a Board that has ultimate authority over decisions. However, there are core differences.

Under IRMA, Committees are multi-stakeholder and work on recommendations in a specific area to the Board, but cannot make decisions.

Under the CMSI, there is a Mining Committee and Value Chain Committee, each with decision making power on "their respective remits." The mining committee will be responsible for much of the standard implementation, updates, interpretation, and so on, whereas the Value Chain Committee, which is where the automakers would sit, is largely in charge of creating a broader value chain strategy. Under this draft, only the Mining Committee has authority and influence over the actual functioning of the standard, the assurance process, claims policy, and grievance mechanism.

Committees are multistakeholder, but not guaranteed to be equally balanced between commercial and non-commercial interests. The model creates industry echo chambers where the value chain actors (automakers, recyclers, processors, and so on) have a separate remit and decision making body from the mining companies.

V. Moreover, Committees have Board-delegated decision-making ability.

While the Board retains ultimate decision-making power, Committees' ability to make decisions on the different issue areas without full transparency or collaboration with one another gives too much opportunity for abuse of power on topics that impact various stakeholders who aren't represented in the Committees.

Finally, the CMSI muzzles Board members' ability to communicate freely and openly in public about the initiative.

Under the CMSI, the fiduciary responsibilities of Board members include limitations on their ability to communicate freely and openly. The CMSI requires Board members "speak with a unified voice when representing the Legal Entity to the community."

This hinders Board members' ability to fully represent the concerns of stakeholder groups, especially mining affected stakeholders and Indigenous peoples, who are already underrepresented in the Board composition. This is also in stark contrast to IRMA's Principles of Engagement that allow for disagreements to be made public.

The governance model will dictate the implementation of the standard, including how audits are carried out, the quality of information audits provide, and whether companies or the CMSI will meaningfully address any grievances brought forward by impacted workers or community members.

The final governance model cements the CMSI as a corporate scheme that is multi-stakeholder in name only. While additional revisions to the final standard must be made to reduce harm, the CMSI is undemocratic, opaque, and lacks rigour. For these reasons, it will not be a trustworthy standard that supports strong due diligence or improved outcomes for mining-affected communities, workers, and Indigenous Peoples.

QUESTION 3

From your perspective, does the three-level performance structure (Towards Good Practice, Good Practice, Leading Practice) of the consolidated Standard meet your expectations for providing an effective on ramp and clear articulation of good practice and effective path to continuous improvement?

Response: 1: Significantly below

No- there are no incentives for companies to progress beyond the Good Practice Level. We detail our comments on this in the Assurance Process section.

Document:
Claims

QUESTION 1

Does the level of transparency provided by the Claims Policy (i.e. through disclosing scores for each Performance Area, aggregated scores to indicate overall progress towards Good Practice, and Performance Claims) meet your expectations to incentivise continuous performance improvement?

Response: 1: Significantly below

The Claims Policy has critical flaws that undermine a culture of continuous improvement and the validity of company claims.

The Claims Policy exaggerates problems created by the Assurance Process that deter companies from working to perform beyond the Good Practice Level in two key ways.

I. Ambiguous meaning around the 80

It is unclear what it means for a company to be 80

II. A problematic scoring process to determine when a company can make a public claim.

Second, the process for determining the score by which a company can make a public performance claim with the logo is problematic. Section 3.1.2.1 gives equal weight to scores that are verified by third party auditors as it does to scores that are self-reported by companies. Page 7 of the current draft states:

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It is also concerning to see this allowance given that within the three-year assurance cycle, two years of data are completely based on company self-assessments and these self-assessments can lead to a score adjustment. This could mean the difference between a company being able to make a claim in a three-year cycle or not.

This creates a perverse incentive for companies to falsely report or over-exaggerate their supposed improvements, undermining the legitimacy of claims made. It also disincentivizes higher performing companies to continue to perform at a high level when they receive the same type of claim as a company that may be cheating the system. Self-assessments should not be able to influence a performance claim at all.

Under the structure of the Consolidated Standard, companies are neither required nor motivated to attempt to perform beyond Good Practice. The Claims Policy and Assurance Process creates a system of mediocrity in which audits and continuous improvement plans of companies incentivize companies to reach the Good Practice Level and stop trying to go beyond it. This undermines the practice of continuous improvement.

Conclusion

For the reasons discussed in the entirety of our feedback, the CMSI remains grossly inadequate and, in its current form, will be a tool for greenwashing rather than a mechanism that drives improvements to industry practices.