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D.C. Circuit Rejects Emergency Motion to Stay Conflict Minerals Rule

On Wednesday, May 14, the D.C. Circuit Court of Appeals denied an emergency motion by the National Association of Manufacturers (NAM) to stay the U.S. Securities and Exchange Commission's (SEC's) conflict minerals rules prior to the deadline to file the first Conflict Minerals Report on June 2, 2014.

Last month, the D.C. Circuit struck down the portion of the conflict minerals rules that required companies to describe certain products as not "DRC conflict free," concluding such disclosure was unconstitutionally compelled speech under the First Amendment. The SEC subsequently announced that it still expects companies to comply with the June 2 filing deadline subject to the D.C. Circuit's modification of the rules. In response, NAM filed the emergency motion requesting that the Court stay the rules or at least the upcoming deadline. The D.C. Circuit denied the motion in a one-sentence order.

Public companies potentially subject to the rules should be aware of the reporting requirements that remain in effect after the D.C. Circuit's decision. For a more detailed description of the requirements of the conflict minerals rules, see our previous legal alert.

Pursuant to the D.C. Circuit's limitation of the rules and the SEC's subsequent modifications, companies are no longer required to:

Identify products that contain conflict minerals as "not found to be 'DRC conflict free'" or "DRC conflict undeterminable."

Obtain an independent private sector audit of its Conflict Minerals Report as required by the rule unless the company voluntarily elects to identify its products as "DRC conflict free."

However, the Conflicts Minerals Report still must include:

A description of the due diligence measures used to determine the source and chain of custody of its conflict minerals.

A description of any products containing conflict minerals, the facilities used to produce the conflict minerals in those products, the country of origin of those minerals, and the efforts to determine the mine or location of origin of those minerals with the greatest possible specificity.

We will continue to keep you apprised of further developments.