

LEGAL UPDATES

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SEC Requires Continued Compliance with Conflict Minerals Rules Despite Court Ruling

Yesterday, the SEC announced that it expects companies to comply with the June 2, 2014 deadline to file any reports required by the conflict minerals rules subject to minor modifications in light of the D.C. Circuit Court of Appeals' ruling that certain portions of the rule violated the First Amendment. As we previously reported, the Court found the requirement that companies describe their products as "not DRC conflict free" was unconstitutionally compelled speech and remanded that portion of the case to the District Court for further proceedings. However, as noted in yesterday's announcement, the decision will not go into effect until June 5, 2014 – three days after the deadline to file the first report.

The SEC explained that companies covered by the rule should comply with those portions that the Court upheld. Therefore, companies that manufacture or contract to manufacture products that contain conflict minerals should prepare to file the new Form SD and, if required, any related Conflict Minerals Reports. However, companies do not have to identify any products that contain conflict minerals as "not found to be 'DRC conflict free'" or "DRC conflict undeterminable." Companies are also not required to obtain an independent private sector audit as required by the rule unless the company voluntarily elects to identify its products as "DRC conflict free."

The National Association of Manufacturers (NAM) immediately filed a motion to stay the entire rule pending final resolution of the litigation. Citing the shaming mechanism compelled by the rule that forced companies to disclose any relationship between their products and mining operations that fund armed conflict in the Democratic Republic of Congo and the close correlation between the portions of the rule that were upheld and those that were struck

down, NAM argued that it is not “feasible to attempt to excise the unconstitutional portions of the rule, and require some type of truncated reported to be filed on June 2, 2014.” The motion requests that the court take action by May 1, 2014.

We will continue to keep you apprised of further developments.