
April 10, 2017

SEC Issues Statements Following Recent Conflict Minerals Decision

On April 7, 2017, Michael Piwowar, Acting Chairman of the Securities and Exchange Commission, issued a public statement addressing the recent final judgment of the District Court for the District of Columbia in *National Association of Manufacturers v. SEC*. In the final judgment, issued on April 4, the court held that Section 1502 of the Dodd-Frank Act and the SEC's conflict minerals rule, Rule 13p-1 and Form SD thereunder, violate the First Amendment to the extent that the rule requires companies to report to the SEC and state on their websites that any of their products "have not been found to be 'DRC conflict free.'" The court held the rule unlawful and set it aside, but only to the extent it requires companies to state that any of their products "have not been found to be 'DRC conflict free.'" The final judgment was issued in accordance with an earlier decision in the case by the Court of Appeals for the District of Columbia Circuit.

By way of background, in 2014, the SEC issued guidance on the conflicts minerals rule (discussed in our alert [here](#)) following the earlier Court of Appeals decision, finding that the rule "violate[s] the First Amendment to the extent the statute and rule require regulated entities to report to the Commission and to state on their website that any of their products have 'not been found to be 'DRC conflict free.'" The 2014 SEC guidance stated that no company is required to describe its products as "DRC conflict free," having "not been found to be 'DRC conflict free,'" or "DRC conflict undeterminable" and that no audit of the Conflict Minerals Report would be required unless a company voluntarily elects to describe a product as "DRC conflict free."

In last week's public statement, Acting Chairman Piwowar announced that, following the final judgment of the district court, he has instructed the staff of the SEC to begin work on a recommendation for future action to address the Court of Appeals decision – including whether Congress's intent in Section 13(p)(1) can be achieved through a descriptor that avoids the constitutional defect identified by the court – and how that determination affects overall implementation of the conflict minerals rule.

Significantly, he also noted that, because the primary function of the extensive requirements for due diligence on the source and chain of custody of conflict minerals set forth in paragraph (c) of Item 1.01 of Form SD (including the Conflict Minerals Report audit requirement) is to enable companies to make the "DRC conflict free" disclosure found to be unconstitutional, "it is difficult to conceive of a circumstance that would counsel in favor of enforcing Item 1.01(c) of Form SD."

In a separate statement issued the same day, the Division of Corporation Finance stated that it has determined that it will not recommend enforcement action to the Commission if companies, including those that are subject to paragraph (c) of Item 1.01 of Form SD, only file disclosure under the provisions of paragraphs (a) and (b) of Item 1.01 of Form SD.

The public statements are available [here](#) and [here](#). We will continue to monitor developments with regard to the conflict minerals rule.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Andrew J. Foley
+1-212-373-3078
afoley@paulweiss.com

David S. Huntington
+1-212-373-3124
dhuntington@paulweiss.com

Raphael M. Russo
+1-212-373-3309
rrusso@paulweiss.com

Hank Michael
+1-212-373-3892
hmichael@paulweiss.com