

April 14, 2014

## Appellate Court Issues Opinion on Conflict Minerals Rule — Portions of District Court Decision Affirmed and Portions Reversed

Midday today, the Court of Appeals for the D.C. Circuit issued its opinion in the challenge to the Conflict Minerals Rule. With one exception, the Court affirmed the District Court's decision upholding the rule. Among other things, the Court rejected the petitioners' arguments relating to the SEC's decision to not include a *de minimis* exception, the SEC's application of the rule to retailers and other companies that only contract to manufacture products, and the due diligence trigger contained in the rule.

Attorneys  
Michael R. Littenberg

However, a majority of the Court agreed with the petitioners' First Amendment challenge to the requirement that companies describe applicable products as not "DRC conflict free" in their filings and on their website, finding that such a requirement constitutes "compelled speech." Accordingly, the Court held that Section 13(p)(1) of the Exchange Act and Rule 13p-1 thereunder violate the First Amendment to the extent that the statute and the Rule require companies to report to the SEC and state on their website that any of their products have "not been found to be 'DRC Conflict Free.'" The case has been remanded to the District Court for further proceedings.

A copy of the decision is available [here](#).

Like others, we are still analyzing the decision, so our commentary is limited, but we will put out further commentary as we digest the decision and other developments occur. For example, the SEC may decide to seek further review of the Court's decision, including by the full D.C. Circuit Court of Appeals. In any case, we expect to have further clarity as to what the Court's decision means for the Conflict Minerals Rule in the coming days. In the meantime, we recommend that companies continue with their compliance efforts.

As we noted in an earlier White Paper, irrespective of the Conflict Minerals Rule, many larger companies — in a variety of industries, not just electronics — intend to continue implementing their 3TG traceability and responsible sourcing initiatives. This will continue to put pressure on the entire public and private company supply chain to implement their compliance programs as well. And, remember, customer contracts, purchase orders, vendor codes of conduct and supply chain policies may continue to require the implementation of a 3TG compliance framework.

In addition, many companies should in any case continue to expect varying degrees of pressure from other constituencies to maintain responsible sourcing momentum, such as NGOs, socially responsible investment funds, public pension funds and consumers. Therefore, companies should consider whether and to what extent they may face these pressures, even in the absence of a binding rule.

### For Further Information

If you would like to learn more about the issues in this Alert, please contact your usual Ropes & Gray attorney.

## Ropes & Gray Supply Chain Compliance and CSR Mailing List

Click [here](#) to join the Ropes & Gray Supply Chain Compliance and CSR mailing list to receive Alerts, articles and program announcements relating to supply chain compliance, or to sign up for other Ropes & Gray mailing lists.

### About our Supply Chain Compliance Practice

Ropes & Gray has a leading supply chain compliance and corporate social responsibility practice. We advise clients across a broad range of regulations, commodities and geographies, and our clients include leading public and private companies and trade groups from every major industry.

With on-the-ground expertise in the United States, Europe and Asia, we are able to take a holistic, global approach to supply chain compliance and CSR, to help clients efficiently and effectively structure and implement their supply chain compliance and CSR programs and mitigate risk.