

October 2, 2015

Petitions Filed to Overturn Decision in Conflict Minerals Rule Litigation

As widely expected, today the SEC and Amnesty International filed petitions seeking an en banc rehearing of the Aug. 18, 2015 panel decision in the ongoing Conflict Minerals Rule litigation. In its August decision, a divided three-judge panel of the U.S. Court of Appeals for the D.C. Circuit reaffirmed its April 2014 majority decision that the requirement under the Conflict Minerals Rule to describe products as having “not been found to be DRC conflict free” is compelled speech that violates the First Amendment.¹ In the following Alert, we discuss what this means for your conflict minerals compliance initiatives.

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For the sake of brevity, this Alert does not discuss the various twists and turns that the litigation may take between now and its ultimate resolution. However, as we have previously indicated, we think it is likely that the Conflict Minerals Rule litigation will continue for some time still, which is **likely to preserve the status quo for at least the current compliance period** (i.e., calendar year 2015 and the related filing due on May 31, 2016).

Accordingly, **registrants — and their direct and indirect suppliers — must continue with their conflict minerals compliance and traceability initiatives.** Except as modified by the SEC’s April 29, 2014 Statement, which is discussed below and in our previous alerts, the Conflict Minerals Rule continues to be very much in effect. In the April 2014 Statement, the SEC indicated that registrants are not required to identify products as “DRC conflict free,” having “not been found to be ‘DRC conflict free’ or ‘DRC conflict undeterminable.’” In the Statement, the SEC also indicated that, pending further action, an independent private sector audit (“IPSA”) will not be required unless a registrant voluntarily elects to describe a product as “DRC conflict free” in its Conflict Minerals Report. Neither today’s petitions nor the Statement modify the requirements of the Conflict Minerals Rule to conduct supply chain inquiries and file a Form SD and a Conflict Minerals Report that contains the other disclosures contemplated by the Conflict Minerals Rule.

The Statement, or an updated version of the Statement that is substantively the same, is likely to remain in effect pending the outcome of the litigation. This means that it **continues to be unlikely that an IPSA will be required for calendar year 2015.**

We expect that if the SEC updates the April 2014 Statement, it will do so relatively soon (perhaps even as early as today, although a new or updated statement was not posted by the SEC before this Alert was released). We will of course be publishing an additional Alert if and when that occurs.

For Further Information

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

¹ Our earlier Alerts on the April 2014 and August 2015 decisions, as well as key court documents, are available on our [Supply Chain Compliance and Corporate Social Responsibility Resource Center](#).

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