ROPES & GRAY

ALERT

CSR & Supply Chain Compliance

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District Court Judge Assigned in Conflict Minerals Rule Case

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How time flies! This month, the litigation relating to the U.S. SEC's Conflict Minerals Rule enters its fourth year. The litigation has been quiet for the better part of the last year, after the SEC's petition seeking rehearing *en banc* by the D.C. Circuit Court of Appeals was denied and the SEC declined to seek Supreme Court review of the appellate court's decision.

In April 2014, the Court of Appeals for the D.C. Circuit held that the requirement under the Conflict Minerals Rule that companies indicate that their products have "not been found to be DRC conflict free" violates the First Amendment. Following the April 2014 decision, the case was remanded to the D.C. District Court to take action consistent with the appellate court's decision. Please see our earlier updates and more fulsome discussions of the litigation here.

In furtherance of the appellate court's decision, late last week, the case was randomly assigned to Judge Ketanji Brown Jackson. As those who have been watching the case for the past four years may remember, the District Court judge who originally decided the case – Robert L. Wilkins – was subsequently elevated to the Court of Appeals.

The $64,000 question is, of course, what does this mean for the audit requirement under the Conflict Minerals Rule? In April 2014, in response to the appellate court's decision, the SEC issued a Statement in which it indicated that an independent private sector audit will not be required unless a company voluntarily elects to describe a product as "DRC conflict free" in its Conflict Minerals Report. For a further discussion of the Statement and mandatory audit stay, please see our earlier Alert on this topic.

We believe, for a variety of reasons, that it is highly unlikely that the mandatory audit requirement will be reinstated for the 2016 compliance year, and the reassignment of the case to a new judge does not necessarily mean that we will see a quick resolution of the case. With that said, although we continue to believe that companies generally should defer on a voluntary audit for the foreseeable future, filers should continue to take steps that will position them for an audit, in particular, benchmarking compliance programs against the OECD Guidance framework, fleshing out program documentation and tightening up disclosure. There are reasons for doing so independent of an audit, including enhancing program efficiency and effectiveness and meeting external stakeholder expectations. For compliance tips for the calendar 2016 compliance year, please view this recent webinar from last week and see our Alert, *Musings on Conflict Minerals Compliance – The Year That Was, the Year That May Be and What You Should Be Doing Now*.

For Further Information

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

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