



## SEC Discusses Conflict Minerals Rule and Court Ruling

Despite the recent U.S. Court of Appeals ruling that the Conflict Minerals Rule (Rule) violated the First Amendment, companies will still need to comply with most of its disclosure requirements.<sup>1</sup> SEC Chairman Mary Jo White said that the SEC will continue to implement most of the Rule's provisions because the ruling does not justify delaying the effective date.

### Key Facts

- The U.S. Court of Appeals for the District of Columbia Circuit found that the SEC violated the First Amendment by requiring companies to report to the SEC and state on their Web sites when their products have not been found to be free of conflict minerals from the Democratic Republic of the Congo (DRC) and adjoining countries.
- The SEC Division of Corporation Finance expects companies to file Form SD and the disclosures required by the Rule on or before the June 2, 2014, due date for 2013 reporting (May 31, 2014, falls on Saturday).
- The SEC staff will consider the need to provide additional interpretive guidance before the reporting deadline.

### Key Impacts

- Companies will need to comply with the Rule's due diligence and reporting requirements.
- An independent private sector audit (IPSA) will be required only if a company voluntarily elects to describe a product as "DRC conflict free."

### Contents

SEC Division of Corporation Finance's Statement on Court Decision .....	2
Independent Private Sector Audit..	2

<sup>1</sup> SEC Chairman Mary Jo White testified to the U.S. House of Representatives' Committee on Financial Services on April 29, 2014.

## SEC Division of Corporation Finance's Statement on Court Decision

The ruling stated that the Rule violated the First Amendment by requiring companies to report to the SEC and to state on their Web sites when their products have not been found to be free of conflict minerals from the DRC and adjoining countries. However, the Court upheld most aspects of the Rule.<sup>2</sup>

After the ruling, the SEC Division of Corporation Finance released a statement that provides guidance about the SEC staff's expectations for companies that must comply with the Rule.<sup>3</sup> The Division 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." However, companies using conflict minerals that are necessary to the functionality or production of a product manufactured, or contracted to be manufactured, must disclose annually on Form SD information about the origin of their conflict minerals.<sup>4</sup>

If, based on its reasonable country of origin inquiry, a company determines its minerals originated, or may have originated, in the DRC or adjoining countries, the company will be required to perform due diligence on the source of its conflict minerals and file a conflict minerals report. For those companies that are required to file a Conflict Minerals Report, they must include a description of the due diligence that they undertook. If the companies have products that are DRC conflict undeterminable or not found to be DRC conflict free, they would not have to use those terms to identify the products, but should disclose the facilities used to produce the conflict minerals, the country of origin of the minerals, and the efforts to determine the mine or location of origin. The staff still expects companies to file the required reports on or before the due date.

## Independent Private Sector Audit

If a company voluntarily elects to describe any of its products as DRC conflict free in its Conflict Minerals Report, it will be permitted to do so as long as it obtains an IPSA. An IPSA is only required if a company makes the election to disclose a product as DRC conflict free.

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<sup>2</sup> The U.S. Court of Appeals for the District of Columbia Circuit Ruling, April 14, 2014, available at [http://www.cadc.uscourts.gov/internet/opinions.nsf/D3B5DAF947A03F2785257CBA0053AEF8/\\$file/13-5252-1488184.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/D3B5DAF947A03F2785257CBA0053AEF8/$file/13-5252-1488184.pdf).

<sup>3</sup> SEC's Statement on the Effect of the Recent Court of Appeals Decision on the Conflict Minerals Rule, available at <http://www.sec.gov/News/PublicStmnt/Detail/PublicStmnt/1370541681994>.

<sup>4</sup> KPMG's Defining Issues No. 13-27, SEC Issues Guidance for Conflict Minerals and Disclosure of Payments by Resource Extraction Issuers, available at [www.kpmginstitutes.com/financial-reporting-network](http://www.kpmginstitutes.com/financial-reporting-network).