



INFORMATIONAL BRIEF
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For more information, contact:

Ram Singhal, Vice President, Technology & Environmental Strategy
(410) 694-0800

Conflict Minerals Rule: Litigation Update

On August 22, 2012 the U.S Securities and Exchange Commission issued the “Conflict Minerals Rule” mandated by the 2010 Dodd-Frank Wall Street Reform & Consumer protection Act. The Rule requires that if conflict minerals (tin, tantalum, tungsten or gold; abbreviated as 3TG) are necessary to the functionality or production of products manufactured or contracted to be manufactured by an SEC reporting company, the company must perform due diligence and make specified disclosures as to the source of the 3TG in its reportable products. The compliance reporting period began January 1, 2013, and the first reports are due to be filed on June 2, 2014.

The National Association of Manufacturers (NAM) filed a challenge in the District Court relating to the SEC’s decision not to 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 in the rule.

On April 14, 2014 the Court of Appeals for the D.C. Circuit issued its opinion. With one exception it affirmed the District Court’s decision upholding the rule. The majority of the Court agreed with the petitioners’ First Amendment challenge to the rule’s requirement that companies report to the Commission and on their web site that any of their products have not been found to be “DRC conflict free.” Subsequently, the SEC issued a statement that it expects companies to file any reports required under the rule 13p-1 on or before the due date except 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.” SEC added that if a company voluntarily elects to describe any of its products as “DRC conflict free” in its Conflict Minerals report, it would be allowed to do so provided it had obtained an independent private sector audit as required by the rule.

The NAM, along with the Chamber of Commerce and Business Roundtable are expected to file a Motion to Stay the rule with the Circuit Court. Their contention is that in the light of the court’s decision that the SEC’s rule, and perhaps the statute itself, violates the First Amendment’s Free Speech Clause.

It may be worth noting that EU has proposed a draft Regulation setting up an EU system of self-certification for importers of 3TG. The self-certification requires EU importers of these metals and their ores to exercise “due diligence” by following the Organization for Economic Cooperation and Development (OECD) Due Diligence Guidance.

