

A photograph of a desk with a pen and a coffee cup. The pen is dark blue with gold accents, lying horizontally on a white surface. To the right, a portion of a white coffee cup is visible. The background is a blurred office setting with a computer monitor and keyboard.

Conflict Minerals Rule Update: Emergency Motion Filed For Complete Stay of SEC's Conflict Minerals Rule

As public companies struggle to craft disclosure in their first Form SD filings due May 31, 2014 (June 2, 2014) consistent with guidance (Guidance) issued on April 29, 2014 by the Securities and Exchange Commission's (SEC) Director of the Division of Corporation Finance, appellants National Association of Manufacturers, Chamber of Commerce and Business Roundtable (Appellants) filed an emergency motion with the D.C. Circuit Court of Appeals on Monday, May 5, 2014, seeking a complete stay of the SEC's conflict minerals rule (Rule 13p-1 under the Securities Exchange Act of 1934, as amended). A copy of the Appellants' motion can be found [here](#). The stay is being sought in light of the April 14, 2014 decision of a three-judge panel of the D.C. Circuit Court, which held that a key portion of the conflict minerals Rule violated the First Amendment as "compelled speech."

The Appellants have requested an expedited decision from the circuit court by May 26, 2014 (which happens to be the Memorial Day federal holiday), given the upcoming Form SD filing deadline. Opposition briefs are due Friday, May 9th, with the Appellants' reply brief due on Tuesday, May 13th.

The Appellants argue that if companies cannot be required to state whether their products have not been found to be DRC Conflict Free as the circuit court held, then the SEC's Guidance requiring companies to comply with the remainder of the Rule, notwithstanding its partial invalidation, no longer serves any of "the overall goals" of the statute. The Appellants further argue that the compelled disclosure invalidated by the circuit court's decision was the "entire basis" of the Congressional mandate established under Section 1502 of the Dodd-Frank Act. The Appellants noted that two SEC Commissioners recently published a joint statement advocating a stay of the full conflict minerals reporting requirement.

As we have noted previously, the debate over compliance with the Rule and the upcoming filing deadline will continue right down to the wire. Companies should proceed with evaluation of their diligence results and drafting of their Form SD, keeping in mind the revised disclosure standards set out in the Guidance

and noted in our [Alert](#) from April 30, 2014. The outcome of the Appellants' motion, or any further action that may be taken by the respective parties or the circuit court, remains uncertain. We will provide further updates of significant developments in this case as they occur so that companies can plan accordingly.

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