

SEC Conflict Minerals Guidance: June 2, 2014 Filing Deadline Stands

On April 29, 2014, the SEC Division of Corporation Finance issued a statement clarifying the effect of the D.C. Circuit decision in *National Association of Manufacturers v. Securities and Exchange Commission*,¹ which substantially rejected an effort to invalidate the conflict mineral rules adopted by the SEC, while limiting the disclosure requirement on First Amendment grounds.²

The SEC statement advises public companies that this year's June 2, 2014 due date for the filing of initial Forms SD is unchanged, subject to any further action that may be taken either by the SEC or a court.³ Additionally, in accordance with *National Association of Manufacturers*, no company is required to describe its products in its disclosures to the SEC, or on its website, as "DRC conflict free," having "not been found to be 'DRC conflict free,'" or "DRC conflict undeterminable."⁴

- If a public company manufactures (or contracts to be manufactured) products that contain conflict minerals necessary to the products' functionality or production, then it must conduct a good-faith, reasonable country of origin inquiry to determine whether the conflict minerals originated in the DRC, or certain adjoining countries, or came from recycled or scrap sources.⁵
- If the company determines, or reasonably believes, that the conflict minerals did not originate in the DRC or certain adjoining countries, or did come from recycled or scrap sources, it is required to file a Form SD briefly describing the country of origin inquiry used to make this determination, and the results of the inquiry.⁶ This information must also be published on the company's public website, and the company needs to provide a link to the website in the Form SD.⁷ It does not need to file a Conflict Minerals Report.⁸
- If the company determines that the conflict minerals did, in fact, originate in the DRC or certain adjoining countries, and did not come from recycled or scrap sources, or that is unable to determine the origin of the conflict minerals, the company must file a Form SD and a Conflict Minerals Report.⁹ The rules require the Conflict Minerals Report to contain a

¹ No. 1:13-cv-00635, slip op. at 23 (D.C. Cir. Apr. 14, 2014) [hereinafter "Slip Op."], 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). For an overview of this opinion see our Firm memorandum, *D.C. Circuit Rejects Effort to Invalidate SEC Conflict Minerals Rules While Limiting Disclosure Requirement on First Amendment Grounds* (April 18, 2014), available at <http://www.cahill.com/publications/firm-memoranda/10130334>.

² Keith F. Higgins, Dir. SEC Division of Corp. Finance, *Statement on the Effect of the Recent Court of Appeals Decision on the Conflict Minerals Rule* (April 29, 2014) [Hereinafter "SEC Statement"], available at <http://www.sec.gov/News/PublicStmnt/Detail/PublicStmnt/1370541681994#.U2ApOFdsv19>.

³ The deadline is formally May 31, 2014, which falls on a Saturday this year, extending the deadline to Monday, June 2.

⁴ Slip. Op. at 23. "DRC" refers to the Democratic Republic of the Congo.

⁵ An overview of the Conflict Minerals Rules is set forth in our Firm memorandum, *SEC Required Conflict Mineral Disclosure* (September 25, 2012), available at <http://www.cahill.com/publications/firm-memoranda/1012969>.

⁶ See SEC Statement and Form SD, available at <http://www.sec.gov/about/forms/formisd.pdf>

⁷ See Form SD.

⁸ *Id.*

⁹ See SEC Statement and Form SD.

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description of the reasonable due diligence the company undertook to determine the source of its conflict minerals, as well as the disclosure of the facilities used to process the conflict minerals, the country of origin of the minerals, and its efforts to determine the mine or location of origin, “with the greatest possible specificity.”¹⁰

- If a company voluntarily elects to describe any of its products as “DRC conflict free” in its Conflict Minerals Report, it must obtain an independent audit, as required by the rules.¹¹ If the company does not include this descriptor, no audit is required.

The Division concluded that it will consider the need to provide additional guidance in advance of the filing due date and noted that company questions about the rules or Form SD be directed to the Office of Rulemaking in the Division of Corporation Finance at 202.551.3430.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; John Schuster at 212.701.3323 or jschuster@cahill.com; or Tara Curtin at 212.701.3459 or tcurtin@cahill.com.

¹⁰ See Form SD.

¹¹ See SEC Statement.