

Public Statement

Updated Statement on the Effect of the Court of Appeals Decision on the Conflict Minerals Rule

SEC Division of Corporation Finance

April 7, 2017

On August 18, 2015, the U.S. Court of Appeals for the District of Columbia Circuit reaffirmed its prior holding that Section 13(p)(1) of the Securities Exchange Act and Rule 13p-1 “violate the First Amendment to the extent the statute and rule require regulated entities to report to the Commission and to state on their website that any of their products have ‘not been found to be “DRC conflict free.””^[1] On April 3, 2017, the U.S. District Court for the District of Columbia entered final judgment in the case and remanded to the Commission.^[2]

Although the district court set aside those portions of the rule that require companies to report to the Commission and state on their website that any of their products “have not been found to be ‘DRC conflict free,’” that court and the Court of Appeals left open the question of whether this description is required by the statute or, rather, is a product of the Commission’s rulemaking.^[3]

In addition, as a result of a request by the Acting Chairman, we have received several comments regarding the desirability of additional guidance or whether relief under the rule is appropriate. Those comments identified several areas for the Commission to consider.

The court’s remand has now presented significant issues for the Commission to address. At the direction of the Acting Chairman, we have considered those issues. In light of the uncertainty regarding how the Commission will resolve those issues and related issues raised by commenters, the Division of Corporation Finance has determined that it will not recommend enforcement action to the Commission if companies, including those that are subject to paragraph (c) of Item 1.01 of Form SD, only file disclosure under the provisions of paragraphs (a) and (b) of Item 1.01 of Form SD. This statement is subject to any further action that may be taken by the Commission, expresses the Division’s position on enforcement action only, and does not express any legal conclusion on the rule.

Companies with questions about the content of Form SD and the Conflict Minerals Report should contact the Division of Corporation Finance at (202) 551-3100.

^[1] *Nat’l Ass’n of Mfrs., et al. v. SEC*, 800 F.3d 518, 530 (D.C. Cir 2015).

^[2] *Nat’l Ass’n of Mfrs., et al. v. SEC*, No. 13-CF-000635 (D.D.C. Apr. 3, 2017).

^[3] 800 F.3d at 530 n. 32.