



## Conflict Minerals Update: Business Organizations File Emergency Motion to Stay Rule

*May 8, 2014*

Last week, the Division of Corporation Finance of the Securities and Exchange Commission (“SEC”) announced that issuers must comply with all aspects of the SEC’s conflict minerals rule except for those held to be unconstitutional by the United States Court of Appeals for the District of Columbia Circuit.<sup>1</sup> Accordingly, several days later, the SEC denied a request of the National Association of Manufacturers and other business organizations (the “appellants”) that the SEC stay implementation of the entire conflict minerals rule or, at a minimum, stay the Form SD filing deadline. On May 5, 2014, the appellants filed an emergency motion with the D.C. Circuit, requesting that the court stay the conflict minerals rule in its entirety, pending the district court’s decision on remand.

In their emergency motion, the appellants advanced three arguments for the necessity of the stay:

1. There is a substantial likelihood that the conflict minerals rule will be vacated, because the portion found to be unconstitutional – namely, the requirement that regulated entities disclose that their products have been found to be “DRC conflict free,” not “DRC conflict free,” or “DRC conflict undeterminable” – is so central to the rule that without it, the remainder of the rule would not “function sensibly” and would not achieve the statute’s intended objective.
2. Absent a stay, the appellants will suffer irreparable harm in the form of enormous monetary sums to be spent on compliance with a rule that remains a “moving target.”
3. The balance of equities and the public interest favor a stay, since “[n]either the SEC nor the public has an interest in the temporary enforcement of a rule that no longer serves the statute’s or the [SEC’s] original goals, and that must be vacated and remanded.”

Given the impending Form SD filing deadline of June 2, the appellants requested an expedited briefing schedule and a decision on their motion by May 26, 2014. On May 7, 2014, the court issued an order adopting the appellants’ proposed briefing schedule.

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<sup>1</sup> See Memorandum of Simpson Thacher & Bartlett LLP, “Court of Appeals Invalidates Part of SEC’s Conflict Minerals Rule; SEC to Implement the Remainder of the Rule” (Apr. 30, 2014).

As a practical matter, issuers should continue to fulfill their obligations pursuant to the SEC's conflict minerals rule and prepare their Forms SD in accordance with the guidance provided by the SEC.

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