SEC Staff Announces Further Relief from Conflict Minerals Reporting Requirements

April 12, 2017

On April 3, in the latest of a string of federal court rulings, the U.S. District Court in Washington, D.C. entered final judgment partially invalidating the SEC's conflict minerals rule, on grounds that it violates the First Amendment to the extent that a company would be required to state that its products have not been found "DRC conflict free."

In response to the ruling, the SEC staff issued updated **guidance** for companies preparing their Form SD filings for calendar year 2016, which are due May 31. The staff announced that it will not recommend enforcement action if a company files only the disclosure in Form SD concerning the "reasonable country of origin inquiry" (under Items 1.01(a) and (b)) and does not file disclosure relating to due diligence on the source and chain of custody of conflict minerals or a Conflict Minerals Report (under Item 1.01(c)).

The new guidance replaces more burdensome **2014 guidance** issued by the staff in response to earlier judicial developments. The 2014 guidance suspended any requirement that a company describe its products as "DRC conflict free," "DRC conflict undeterminable" or "not found to be 'DRC conflict free,'" but still required due diligence, a description of diligence efforts, and in certain cases, a Conflict Minerals Report describing products containing conflict minerals, production facilities and country of origin. (See our prior **newsflash**.)

The staff continues to evaluate the conflict minerals rule at the request of Acting Chairman Piwowar, and is considering comments responding to the Acting Chairman's invitation for comment on additional guidance or relief. Pending bills in Congress would, if enacted, repeal the Dodd-Frank mandate that gave rise to the conflict minerals rule. One way or another, then, the conflict minerals rule appears on its way to losing its legal bite.

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