

# Securities Regulation and Compliance Alert

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## SEC Conflict Minerals Disclosure Requirements Ruled Unconstitutional

The U.S. Court of Appeals for the District of Columbia Circuit ruled earlier today that the U.S. Securities and Exchange Commission's conflict minerals disclosure requirements are unconstitutional and remanded the matter to the district court for further consideration.

In making its ruling, the circuit court concluded that the requirement in the rules to label products as not "DRC conflict free" in disclosures filed with the SEC unconstitutionally compels speech. The circuit court held that the rule therefore violates the First Amendment to the extent that it requires issuers to report to the SEC and state on their websites that any of their products have "not been found to be 'DRC conflict free.'" The court also held that parts of the statute (Exchange Act Section 13(p)) that Congress adopted as part of the Dodd-Frank Act to require the SEC to promulgate the conflict minerals rules were unconstitutional to the same extent.

The court's holding largely rested on the SEC's failure to present any evidence that less restrictive means than the required product description would not achieve the rules' intended purpose. The court characterized as "intuitive" two alternatives to the SEC's approach advanced by parties to the litigation. Those alternatives included allowing issuers to use their own language to describe their products and having the government compile its own list of products that it believes are affiliated with the war in the Democratic Republic of Congo based on information submitted by issuers to the SEC.

Notwithstanding the circuit court's holding on the constitutionality question, the court upheld the remaining portions of the district court's decision. The circuit court held that the SEC did not act arbitrarily and capriciously when it decided not to adopt a *de minimis* exception to the rules, when setting the threshold for having to conduct due diligence and when extending the rules to issuers that only contract to manufacture products. The circuit court also held that neither the SEC's economic analysis of the rules nor its decision to allow smaller issuers a longer phase-in period before having to obtain an independent audit justified vacating the rules.

It is unclear at this time what, if any, impact the circuit court's decision will have on the rules' current requirements — including the due date (June 2, 2014) of the first conflict minerals disclosures. It is possible that the SEC will stay the implementation of the rules pending the district court's review. We expect that the SEC will provide guidance in this regard. We will provide further information as it becomes available.

A copy of the circuit court's decision is available [here](#). For additional information about the rules affected by the court ruling, please see our previous client alerts [here](#) and [here](#).