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Deadline Looms for Conflict Mineral Disclosure Requirements: Update for Suppliers of Reporting Companies

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Section 1502 of the **Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")** addressed concerns that proceeds from the trade and exploitation of certain minerals originating in several central African countries were helping to **finance extraordinary violence in the Democratic Republic of the Congo**. In 2012, the Securities and Exchange Commission ("SEC") issued the long awaited conflict minerals rule (the "Rule") promulgated as new Rule 13p-1 under the Securities and Exchange Act of 1934. Since the Rule was issued, manufacturers and interest groups across the country (e.g., the National Association of Manufacturers, the Chamber of Commerce, and the Business Roundtable) have been trying to fight the Rule because they believe it is well-intentioned, but poorly crafted.

In general, the Rule requires any reporting company having conflict minerals (i.e., tantalum, tin, tungsten, gold) that are necessary to the functionality or production of a product manufactured or contracted to be manufactured by that reporting company to file a report with the SEC on Form SD, disclosing whether those conflict minerals originated in a covered country and whether those conflict minerals benefit or finance armed groups in the covered countries. The reports must also be posted on the reporting company's website for one year.

SEC reporting companies are not the only companies affected by the Rule. Non-reporting companies that supply goods indirectly or directly to SEC reporting companies must provide information about conflict minerals in the products they sell. To provide that information, the non-reporting company suppliers will need to perform their own diligence, even if they are not required to file disclosure reports with the SEC.

In most cases, the reporting company will send its direct suppliers templates to be completed certifying that the products sold do not contain conflict minerals. In order to make that certification, the reporting company may ask its direct suppliers to send the same template to the supplier's vendors so that the products and minerals can be traced all the way up the supply chain. Therefore, the Rule can have an impact on multiple levels of the supply chain.

On April 29, 2014, reporting companies received an eagerly-awaited update from the SEC on the effect of a recent Court of Appeals decision, which concluded that the Rule violated the First Amendment because it required reporting companies to report and post on their websites whether any of their products have "not been found to be 'DRC conflict free.'"

Manufacturers and reporting companies had been hoping that the SEC would delay the June 2, 2014 deadline for submitting SEC Form SD. Unfortunately for manufacturers and reporting companies, the SEC's reaction to the Court of Appeals, April 29, 2014, decision was to issue only a partial stay of the reporting requirements.



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Specifically, the SEC partial stay, SEC guidance permit a reporting company: (i) decline to identify its products on Form SD or in a related Conflict Minerals Report as (a) either DRC conflict free, (b) having not been found to be DRC conflict free or (c) DRC conflict undeterminable; and (ii) to decline to obtain an independent private sector audit, unless the issuer voluntarily elects to describe its products as "DRC conflict free" in its Conflict Minerals Report.

Despite the SEC's partial stay, the reporting deadline still looms for those issuers who are subject to conflict mineral disclosure obligations. Suppliers to SEC reporting companies should be aware of the fact that manufacturers may have delayed their diligence and compliance with the conflict minerals rule and therefore may be scrambling to meet the June 2, 2014 deadline for submitting the Form SD to the SEC. Thus, suppliers may be asked by some of their top customers to complete conflict minerals reports and send them back to their customers on a short turnaround. Suppliers must be careful on how they answer the questions posed by their customers and how they complete the reporting templates.

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