

Reconsideration of Conflict Minerals Rule Implementation

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Yesterday, Acting SEC Chairman Piwowar issued a public statement that he has directed the staff to reconsider whether the 2014 guidance on the conflict minerals rules is “still appropriate and whether any additional relief is appropriate.” He also encouraged interested parties to submit comments within the next 45 days on all aspects of the rule and guidance. Comments may be submitted [here](#).

Directed under the Dodd-Frank Act, the rules were adopted in 2012, not without controversy. Two years later, shortly before the rules went into effect, the D.C. Circuit Court of Appeals held that the rule violates the First Amendment by requiring that companies report that any of their products have “not been found to be DRC conflict free.”

The SEC staff later instructed companies to file their first reports describing companies’ reasonable country of origin inquiry and supply-chain due diligence, but stated that companies need not characterize any products as “DRC conflict free,” having “not been found to be ‘DRC conflict free,’” or “DRC conflict undeterminable.” For products that otherwise would have merited a label other than “DRC conflict free,” the company should disclose the facilities used to produce the conflict minerals, the country of origin of the minerals and the efforts to determine the mine or location of origin. A company could voluntarily elect to describe its products as “DRC conflict free” if it obtained an independent private sector audit. No audit is needed if no products are identified as “DRC conflict free.”

That staff guidance ran contrary to calls by then Commissioners Gallagher and Piwowar to stay the rule entirely, because the district court could (“and, in our view, should”) determine that the entire rule is invalid. In 2015, in response to the SEC’s request to rehear the case in light of the outcome of an unrelated First Amendment lawsuit, the D.C. Circuit Court of Appeals upheld its original finding that a key aspect of the rule violates constitutional free-speech guarantees.

Acting Chairman Piwowar’s statement yesterday noted that the litigation remains ongoing and he believes that the rule is “misguided,” with the disclosure requirements “caus[ing] a de facto boycott of minerals from portions of Africa, with effects far beyond the Congo-adjacent region.” The Financial CHOICE Act, introduced earlier this year, includes a provision to repeal the conflict minerals rule.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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