
July 24, 2013

District Court Upholds the SEC's Conflict Minerals Rule

On July 23, 2013, the District Court for the District of Columbia upheld Rule 13p-1 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), which was promulgated by the Securities and Exchange Commission (the “SEC”) pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Rule 13p-1 requires issuers to disclose their use of coltan, cassiterite, gold and wolframite originating in the Democratic Republic of the Congo (the “DRC”) or an adjoining country (“Conflict Minerals”) in their manufactured products.

The plaintiffs — the National Association of Manufacturers, the Chamber of Commerce, and the Business Roundtable (collectively, the “Plaintiffs”) — challenged Rule 13p-1 on several grounds. First, the Plaintiffs claimed that Rule 13p-1 was “arbitrary and capricious” within the meaning of the Administrative Procedure Act (the “APA”) and, therefore, unlawful. Specifically, the Plaintiffs argued that the SEC failed to adequately analyze the humanitarian costs and benefits of Rule 13p-1. The District Court found this contention to lack merit as the Court interpreted the Exchange Act to only require that the SEC “consider the impact that a rule or regulation may have on various economic-related factors—efficiency, competition, and capital formation” and not to “consider whether [Rule 13p-1] would actually achieve the *humanitarian* benefits identified by Congress.” The District Court also rejected the Plaintiffs’ argument that the SEC’s estimates of the costs of implementing the rule were flawed, finding that the SEC’s methodology in reaching such estimates to be “eminently appropriate.”

The Plaintiffs also claimed that Rule 13p-1 was arbitrary and capricious because the SEC improperly (i) failed to create a *de minimis* exception from reporting in cases where issuers use only small amounts of conflict minerals in their products, (ii) required reporting from any issuer that believes that it uses conflict minerals that *may* have originated in the DRC or an adjoining country and (iii) subjected issuers that contract to manufacture products that contain conflict minerals to Rule 13p-1. With respect to each of these arguments, the District Court found that the SEC acted reasonably and within its authority. Lastly, the District Court upheld the SEC’s decision to permit different phase-in periods for Rule 13p-1, depending on the size of the issuer, as also reasonable under the APA.

The Plaintiffs also claimed that Rule 13p-1 improperly compelled “burdensome and stigmatizing speech” in violation of the First Amendment because Rule 13p-1 could obligate companies to publicly state, both on their websites and in SEC filings, that certain of their products are not “DRC conflict free.” The District Court rejected the Plaintiffs’ First Amendment argument, concluding that Rule 13p-1 survived scrutiny, in part, because Rule 13p-1 advanced Congress’s substantial interest “in promoting peace and security in and around the DRC.”

While the Plaintiffs may appeal the District Court's decision to the Court of Appeals for the District of Columbia, issuers should continue to prepare to comply with Rule 13p-1, as Rule 13p-1 remains in effect and will require initial reports to be filed with the SEC by May 31, 2014.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Christopher J. Cummings
416-504-0522
ccummings@paulweiss.com

Andrew J. Foley
212-373-3078
afoley@paulweiss.com

Adam M. Givertz
416-504-0525
agivertz@paulweiss.com

Edwin S. Maynard
212-373-3024
emaynard@paulweiss.com

Stephen C. Centa
416-504-0527
scenta@paulweiss.com

Associate Brad Goldberg contributed to this client alert.