



Court Ruling Regarding the Dodd-Frank Conflict Minerals Disclosure Requirements

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The Court, per Judge Randolph, held that “15 U.S.C. § 78m(p)(1)(A)(ii) & (E), and the Commission’s final rule, 56 Fed. Reg. at 56,362-65, violate the First Amendment to the extent the statute and rule require regulated entities to report to the Commission and to state on their website that any of their products have ‘not been found to be ‘DRC conflict free.’”

The Court remanded the case to the U.S. District Court for the District of Columbia for further proceedings consistent with its opinion. The Court did not address the immediate impact of its opinion on the reports companies must file with SEC, the first of which are due on May 31, 2014. It is reasonable to conclude that covered companies will not be required to state that they have products that are not DRC conflict free, but it is unclear whether the holding will stay any other portion of the reporting requirements pending the District Court’s final decision. We will continue to monitor and analyze the holding and any new developments as they occur.

The Court summarily rejected NAM’s three other arguments that the SEC’s regulations are invalid.

Judge Srinivasan filed a separate opinion, concurring in the court’s statutory analysis, but concluding that the Court should not have ruled on the First Amendment claims because, in his view, the Court has agreed to *en banc* review of a materially similar claim in a different case. The majority responded, “Issuing an opinion now provides an opportunity for the parties in this case to participate in the court’s *en banc* consideration of this important First Amendment question.” Slip op. at 18 fn.9

The Court's full opinion is available at:

[http://www.cadc.uscourts.gov/internet/opinions.nsf/D3B5DAF947A03F2785257CBA0053AEF8/\\$file/13-5252-1488184.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/D3B5DAF947A03F2785257CBA0053AEF8/$file/13-5252-1488184.pdf).

Without any apparent relation to NAM's litigation, the SEC issued updated conflict minerals FAQs on April 7. The FAQs largely focus on the regulation's requirement that, under certain defined circumstances, covered issuers obtain an independent audit of their conflict minerals report. For example, the FAQs clarify that an auditor does not need to be a certified public accountant to conduct the audit that the regulations require. The FAQs and responses are available at: <http://www.sec.gov/divisions/corpfin/guidance/conflictminerals-faq.htm>

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