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On April 14, 2014, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *National Association of Manufacturers, et al. v. SEC, et al.*, No. 13-5252 (D.C. Cir. April 14, 2014). That case involved a challenge to Exchange Act Rule 13p-1 and Form SD.[1] Rule 13p-1 and Form SD were adopted pursuant to Exchange Act Section 13(p), which was added by Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. [2] The Court of Appeals rejected all of the challenges to the rule based on the Administrative Procedure Act and the Securities Exchange Act of 1934. The Court, however, concluded that Section 13(p)(1) and Rule 13p-1 "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."'"[3] In so concluding, the Court specifically noted that there was no "First Amendment objection to any other aspect of the conflict minerals report or required disclosures."[4] In an order issued concurrently with the decision, the Court of Appeals withheld the issuance of its mandate until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc. As a result, the earliest date on which the Court's mandate is likely to issue is June 5, 2014. Under Rule 13p-1, the first reports are due to be filed on June 2, 2014.

Subject to the guidance below and any further action that may be taken either by the Commission or a court, the Division expects companies to file any reports required under Rule 13p-1 on or before the due date. The Form SD, and any related Conflict Minerals Report, should comply with and address those portions of Rule 13p-1 and Form SD that the Court upheld. Thus, companies that do not need to file a Conflict Minerals Report should disclose their reasonable country of origin inquiry and briefly describe the inquiry they undertook. For those companies that are required to file a Conflict Minerals Report, the report should include a description of the due diligence that the company undertook. If the company has products that fall within the scope of Items 1.01(c)(2) or 1.01(c)(2)(i) of Form SD, it would not have to identify the products as "DRC conflict undeterminable" or "not found to be 'DRC conflict free,'" but should disclose, for those products, 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.

No company is required to describe its products as "DRC conflict free," having "not been found to be 'DRC conflict free,'" or "DRC conflict undeterminable." If a company voluntarily elects to describe any of its products as "DRC conflict free" in its Conflict Minerals Report, it would be permitted to do so provided it had obtained an independent private sector audit (IPSA) as required by the rule.[5] Pending further action, an IPSA will not be required unless a company voluntarily elects to describe a product as "DRC conflict free" in its Conflict Minerals Report.

The Division will consider the need to provide additional guidance in advance of the filing due date. Companies with questions about the content of the Form SD and Conflict Minerals Report should contact the Office of Rulemaking in the Division of Corporation Finance at (202) 551-3430.

[1] *Conflict Minerals*, 77 Fed. Reg. 56,274 (Sept. 12, 2012) (codified at 17 C.F.R. §§ 240, 249b).

[2] PL 111-203, 124 Stat. 1376, 2213 (2010).

[3] Slip Op. at 23.

[4] Slip Op. at 17 n.8.

[5] FAQ #15 at http://www.sec.gov/divisions/corpfin/guidance/conflictminerals-faq.htm.

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