

Client Alert

July 2013

Federal District Court Upholds SEC Conflict Minerals Rule

In a much-anticipated ruling, the US District Court for the District of Columbia issued an opinion on July 23, 2013, rejecting the plaintiffs' challenge of the SEC conflict minerals rule and granting the SEC summary judgment. While it is likely the plaintiff trade associations will pursue an appeal to the US Court of Appeals for the DC Circuit, the rules will remain in effect absent a stay of the lower court's decision. With the May 31, 2014, reporting deadline rapidly approaching, we provide our recommendations as to what affected companies should be considering now.

Although many companies are far along in their compliance efforts, we continue to hear about others that have not begun to put in place a conflict minerals compliance program, or are at just the earliest stages of doing so. The district court's ruling is a reminder to wait no longer. Each company's business is different, and any compliance program should be customized to a company's unique facts and circumstances, but some general guidelines are as follows:

1. Create a working group to take responsibility for compliance and reporting.
 - Include representatives from legal, finance, purchasing/sourcing, engineering/design and R&D functions.
 - Engage consultants as necessary (e.g., legal, audit, supply chain diligence).
 - Create a timeline and budget, and assign responsibilities.
 - Identify the company's "products."
 - Look at ancillary businesses in addition to core revenue generators.
 - Keep in mind how the company describes its "business."
 - Determine the makeup of the company's products and their components.
 - Review current products and components.
 - Establish reporting and compliance functions for new product development.
2. Contact your suppliers.
 - Map your supply chain.
 - Communicate what cooperation the company expects from its suppliers.
 - Review and possibly amend current supply agreements; adopt standard language for new supply agreements.

- Create a form of annual certification (or adopt industry forms).
- 3. Draft a conflict minerals policy and make it publicly available.
- 4. Test your system with a pilot program.
- 5. Join industry groups focused on these issues.
- 6. Engage customers.
- 7. Engage the NGO community.

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