

Mining and Natural Resources Law

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U.S. Appeals Court Finds SEC's Conflict Minerals Rule Unconstitutional

On April 14, 2014, the U.S. Court of Appeals for the District of Columbia Circuit found the disclosure requirements of the United States Securities and Exchange Commission (SEC) relating to conflict minerals to be unconstitutional.

As discussed in previous Goodmans Updates, Rule 13p-1 under the *Securities Exchange Act of 1934* (the "Rule") requires U.S. public companies to disclose their use of "conflict minerals." Conflict minerals are defined to include gold, coltan, cassiterite and wolframite, and other minerals determined by the Secretary of State to be financing conflict in the Democratic Republic of Congo or an adjoining country.

One aspect of the Rule could require U.S. issuers to describe their products as not "DRC conflict free" in the report they file with the SEC and posting such conclusion on their website. In its ruling, the circuit court found that these requirements compel speech in violation of the First Amendment to the United States Constitution. In its ruling, the circuit court stated:

[T]he label "conflict free" is a metaphor that conveys moral responsibility for the Congo war. It requires an issuer to tell consumers that its products are ethically tainted, even if they only indirectly finance armed groups...By compelling an issuer to confess blood on its hands, the statute interferes with that exercise of the freedom of speech under the First Amendment.

Notwithstanding its ruling as to the constitutionality of the Rule, the circuit court upheld the district court's findings that: (i) the SEC did not act arbitrarily and capriciously when it decided not to adopt a *de minimis* exception for the Rule, and (ii) there were no issues with the economic analysis undertaken by the SEC in respect of the Rule.

The circuit court remanded the case to a district court for further considerations. With the requirements under the Rule set to take effect beginning at the end of May 2014, it is unclear how this ruling will impact their implementation.

While the Rule (and its legal challenges) will ultimately only affect U.S. issuers whose products may involve conflict minerals, Canadian issuers and their advisors are closely following the proceedings. Earlier this month, the Canadian federal government began debating a bill in respect of the use of conflict minerals. It remains to be seen whether this circuit court's ruling, like other U.S. court rulings, will influence Canada's adoption of regulations surrounding the use of conflict minerals, along with any related disclosure and reporting requirements.

Please contact any member of our Mining and Natural Resources Group for further information.