

International Trade Alert

February 2, 2017

Key Points

- Acting SEC Chairman Michael S. Piowar considers the conflict minerals rule to be “misguided” and calls for interested parties to comment on its implementation.
- Comments in response to the two statements outlined below are due within 45 days of the January 31, 2017, statements (i.e., March 17, 2017).
- All comments submitted to the SEC will be made available to the public.



SEC Calls for Comments on Conflict Minerals Rule Implementation and Guidance

On January 31, 2017, Acting Chairman of the Securities and Exchange Commission (SEC), Michael S. Piowar, issued two statements calling for comments on the SEC’s enforcement of the conflict minerals reporting requirements of the Dodd-Frank Act. Congress implemented the conflict minerals reporting requirements in an effort to reduce funding to armed groups that commit human rights abuses and contribute to conflict in the Democratic Republic of Congo (DRC).

In his *Statement on the Commission’s Conflict Minerals Rule*, Acting Chairman Piowar directs the staff of the SEC to consider whether the guidance it issued following the U.S. Court of Appeals for the District of Columbia’s decision in *NAM vs. SEC* is still appropriate. The court’s decision invalidated portions of the conflict minerals requirements for violating the First Amendment’s prohibition against compelled speech. Please see our previous blog posts [here](#). In its subsequent guidance, the SEC issued a partial stay of the reporting requirements and instructed that (1) covered companies are not required to state “DRC Conflict Free,” “DRC Conflict Undeterminable” or “have not been found to be DRC Conflict Free” in relation to their covered products; and (2) an independent private-sector audit is not required, unless the company voluntarily elects to state that its products are DRC Conflict Free. The litigation is ongoing, and the case is currently on remand to the U.S. District Court for the District of Columbia.

In an additional statement, *Reconsideration of Conflict Minerals Rule Implementation*, Acting Chairman Piowar comments on the unintended impact of the conflict minerals rules on the DRC and surrounding areas based on his visit to the region in 2016. According to Acting Chairman Piowar, “this misguided rule” has caused “a de facto boycott of minerals from portions of Africa, with effects far beyond the Congo-adjacent region.” Not only has the cost of compliance harmed legitimate businesses in the region,

it “is also unclear that the rule has in fact resulted in any reduction in the power and control of armed gangs or eased the human suffering of many innocent men, women, and children in the Congo and surrounding areas.” Acting Chairman Piwowar also questioned whether the impact of the rule could undermine U.S. national security interests.

Through the two statements, the SEC invites detailed public comments on:

- whether the SEC guidance needs to be updated or additional relief from full compliance is still needed, given the current state of litigation considering the unintended consequences on the DRC, whether the conflict minerals rule has achieved its purpose
- all other aspects of the rule and guidance.

Comments are due within 45 days of the January 31, 2017, statement (i.e., March 17, 2017). Those interested must submit their name, email address and comments using the SEC’s [online form](#) (optional fields include professional affiliation, City, State, and Country). It is important to note that all comments submitted to the SEC will be made available to the public.

Contact Information

If you have any interest in filing comments, or if you have any questions concerning this alert, please contact:

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