

Conflict Minerals Legal Challenge Rejected

In a decision that surprised some observers, on July 23, 2013, the US District Court rejected the National Association of Manufacturers' (NAM) legal challenge to the conflict minerals rule. After months of pleadings and procedural activity, the district court, in *NAM v SEC*, rejected the petitioners' claims that elements of the conflict minerals rule issued by the SEC were arbitrary and capricious and the rule violated the First Amendment, thereby upholding the final rule. As a result, the conflict minerals rule remains in place and issuers must comply with its requirements and make any required filings by May 31, 2014.

Court's Summary of Petitioners' Claims

The court summarized the petitioners' claims as falling into two categories:

- SEC's actions in creating the rule were arbitrary and capricious; and
- Requiring companies to publish their conflict minerals disclosures on their own company websites constitutes compelled speech in violation of the First Amendment.

In its 63-page decision, the court walked through the various areas of dispute, rejecting each one of the petitioners' claims. A few of the areas of dispute are discussed here.

De Minimis Exception

The petitioners objected to the SEC's not adopting a *de minimis* exception to the conflict minerals rule. The court noted that the SEC did not claim that it lacked the authority to include a *de minimis* exception, but rather it determined that such an exception would be inappropriate. The court acknowledged that the SEC could have been more thorough but would not conclude that the SEC's determination was unreasonable. The result is that there is still no *de minimis* exception to the conflict minerals rule.

Contract to Manufacture

The petitioners argued that the conflict minerals rule should not cover companies that contract with others for the manufacture of products. The statute was a bit ambiguous on this subject (including only manufacturers in one provision, while including companies that contract with others for manufacturing in another provision). But the SEC described the analysis it used in concluding that companies that "contract to manufacture" should be covered by the rule. Noting that the SEC had indeed considered the issue, the court determined that the SEC's decision was not arbitrary or capricious. Therefore, companies that contract with others to manufacture products continue to be covered by the rule as long as they have some influence over the manufacturing process.

First Amendment Claim

Finally, the petitioners argued that the conflict minerals rule's disclosure requirements compel "burdensome and stigmatizing speech" in violation of the First Amendment. First, the court concluded that during the oral argument, the petitioners limited their objections to the requirement that companies make public disclosures on their websites and did not object to the filing of disclosure with the SEC. Then, the court rejected the First Amendment objection to the public disclosures. Interestingly, the court noted that the disclosure required by the rule does further Congress' interest in peace and security in the Democratic Republic of Congo. In its decision, the court was sensitive to giving a deferential judicial review where it saw the conflict minerals rule as an "intersection of national security, foreign policy, and administrative law."

Summary

In reaching its conclusions, the court often noted that the arguments and issues raised by the petitioners had been considered by the SEC during the rule making process (sometimes resulting in changes in the final rule). This fact, and the SEC's reasoning in reaching certain conclusions about provisions of the rule, led the court to conclude that the SEC did exercise its discretion where it deemed appropriate and that its decisions were not arbitrary or capricious.

The court's decision was strongly worded and rejected each of the claims presented by the petitioners. The result is that the final conflict minerals rule continues to apply without change. It is unclear what steps the petitioners will take next. But, it is clear that hopes that the court's decision would relieve companies of conflict minerals compliance have been dashed – at least for now.

Please see our [Conflict Minerals Law Blog](#) for continuing discussion about the conflict minerals rule and compliance efforts.

For questions, please contact Dynda A. Thomas or your usual Squire Sanders contact.

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