

# Memorandum

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## SEC Acting Chairman Piowar Announces Reconsideration of Conflict Minerals and Pay Ratio Rules

February 8, 2017

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In the last two weeks, the Acting Chairman of the Securities and Exchange Commission (“SEC”) has made two announcements that could potentially impact the implementation of two controversial rules previously adopted by the SEC: the conflict minerals rule and the pay ratio rule.<sup>1</sup>

Addressing the SEC’s conflict minerals rule in two brief statements dated January 31, 2017, Acting Chairman Michael Piowar noted that, in response to the April 2014 ruling of the U.S. Court of Appeals for the D.C. Circuit which partially invalidated the conflict minerals rule, the then-Director of the SEC’s Division of Corporation Finance issued a statement indicating that the SEC expected issuers to comply with those aspects of the rule that were upheld by the Court.<sup>2</sup> Shortly thereafter, the SEC issued an order staying the effect of the compliance date for those portions of rule that were held to violate the First Amendment.<sup>3</sup> The case was subsequently remanded to the district court for further proceedings, and the litigation is still pending. Meanwhile, the guidance of the SEC staff remains in effect.

As explained by Acting Chairman Piowar, the temporary transition period provided for in the conflict minerals rule has since expired, and “the reporting period beginning January 1, 2017 is the first reporting

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<sup>1</sup> See Public Statement, Acting Chairman Michael S. Piowar, [“Reconsideration of Conflict Minerals Rule Implementation”](#) (Jan. 31, 2017); Acting Chairman Michael S. Piowar, [“Statement on the Commission’s Conflict Minerals Rule”](#) (Jan. 31, 2017); Public Statement, Acting Chairman Michael S. Piowar, [“Reconsideration of Pay Ratio Implementation”](#) (Feb. 6, 2017). The conflict minerals rule requires public companies to investigate and disclose the origin of certain minerals found in the war-ridden Congo region (“conflict minerals”). The pay ratio rule requires reporting companies to disclose the median of the annual total compensation of all company employees other than the company’s chief executive officer (“CEO”), the CEO’s annual total compensation and the ratio between these two numbers.

<sup>2</sup> See Keith F. Higgins, Director, Division of Corporation Finance, [“Statement on the Effect of Court of Appeals Decision on the Conflict Minerals Rule”](#) (Apr. 29, 2014).

<sup>3</sup> See Securities and Exchange Commission, [“SEC Issues Partial Stay of Conflict Minerals Rules”](#) (May 2, 2014).

period for which no issuer falls within the terms of that transition period.” Accordingly – and because of the “unexpected duration of litigation” – Acting Chairman Piowar directed the staff “to consider whether the 2014 guidance is still appropriate and whether any additional relief is appropriate in the interim.”

The Acting Chairman further indicated his understanding, based on first-hand accounts from people living in Africa affected by the conflict minerals rule, that the rule has “caused a *de facto* boycott of minerals from portions of Africa, with effects far beyond the Congo-adjacent region.” He further asserted that “[i]t 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.” Moreover, Acting Chairman Piowar explained, the withdrawal from the Congo region could “undermine U.S. national security interests by creating a vacuum filled by those with less benign interests.” Given this information, Acting Chairman Piowar requested public comment on the rule and the SEC’s guidance, to be submitted within 45 days of his request.

Taking a similar tactic, earlier this week, Acting Chairman Piowar also signaled the reconsideration of another Dodd-Frank mandated rule – the pay ratio rule. Noting that compliance with the pay ratio rule is required for issuers’ first fiscal year beginning on or after January 1, 2017, Acting Chairman Piowar stated that “[i]ssuers are now actively engaged in the implementation and testing of systems and controls designed to collect and process the information necessary for compliance.” Acting Chairman Piowar expressed, however, that it is his understanding that “some issuers have begun to encounter unanticipated compliance difficulties that may hinder them in meeting the reporting deadline.” To gain a better understanding of “the nature of these difficulties,” the Acting Chairman is seeking public comment “on any unexpected challenges that issuers have experienced as they prepare for compliance with the rule and whether relief is needed.” Comments are due with the SEC within 45 days of Acting Chairman Piowar’s announcement. Acting Chairman Piowar has also directed the staff “to reconsider the implementation of the rule based on any comments submitted and to determine as promptly as possible whether additional guidance or relief may be appropriate.”

### **Implications of Acting Chairman Piowar’s Announcements**

Acting Chairman Piowar’s statements neither delay the implementation of the pay ratio disclosure requirement nor change the state of play with regard to the conflict minerals rule. While some issuers may determine to submit comments in response to one or both of Acting Chairman Piowar’s requests, at this point issuers should proceed as usual with their preparations for compliance with the pay ratio rule for the 2017 fiscal year, and those subject to the conflict minerals rule should continue to prepare their next Form SD. Acting Chairman Piowar’s statements suggest, however, that there may be further developments with respect to these rules in the coming months that could affect issuers.

If you have any questions or would like additional information, please do not hesitate to contact **Yafit Cohn** at +1-212-455-3815 or [yafit.cohn@stblaw.com](mailto:yafit.cohn@stblaw.com), or any other member of the Firm's Public Company Advisory Practice.

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