IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL ASSOCIATION OF MANUFACTURERS, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, BUSINESS ROUNDTABLE, Appellants, vs. SECURITIES AND EXCHANGE COMMISSION, Appellee, AMNESTY INTERNATIONAL USA, and AMNESTY INTERNATIONAL LTD., Intervenor-Appellees.	No. 13-5252

APPELLANTS' CONSENT MOTION TO EXPEDITE

On August 22, 2012, the SEC adopted Rule 13p-1 and Form SD, *Conflict Minerals*, 77 Fed. Reg. 56,274 (Sept. 12, 2012), which is one of the costliest rules ever issued by the SEC. Promulgated pursuant to Section 1502 of the Dodd-Frank Act, 15 U.S.C. § 78m(p), the Rule requires companies to determine whether *any* quantity of tin, tantalum, tungsten, gold, or their related ores—even tiny "trace" amounts—are "necessary to the functionality or production" of a product that they manufacture or "contract to manufacture." 77 Fed. Reg.

at 56,279, 56,297. Companies must then conduct a "reasonable country of origin inquiry" to determine whether there is "reason to believe" that any of the minerals "may have originated" in the Democratic Republic of the Congo ("DRC") or one of the nine adjoining countries (comprising most of central Africa). *Id.* at 56,313. And, if there is such a reason to believe, companies must conduct onerous "due diligence" on the minerals' source and chain of custody, obtain a private sector audit, file a "Conflict Minerals Report" describing their due diligence measures, and publicly list and describe on their own websites which of their products were not "found to be DRC conflict free." *Id.* at 56,281, 56,313 (internal quotation marks omitted). By the SEC's own estimation, initial compliance will likely cost companies $3 to $4 billion. *Id.* at 56,334. And the SEC acknowledges that ongoing future compliance will cost an additional $200 to $600 million per year. *Id.*

On October 19, 2012, Appellants petitioned this Court to review the Rule. The Court granted Appellants' unopposed motion for expedited review, but thereafter held that it lacked jurisdiction over such petitions, *American Petroleum Institute v. SEC*, 714 F.3d 1329 (D.C. Cir. 2013), and, at Appellants' request, transferred the case to the district court. Noting the importance of prompt disposition of the case, the parties jointly asked the district court to treat the petition for review as a complaint, to decide the case on the briefs already filed in this Court, and to expedite its consideration. The district court

granted these requests. *See* Scheduling Order at 2, *Nat'l Assoc. of Manufacturers v. SEC*, No. 1:13-cv-00635-RLW (D.D.C. May 16, 2013), ECF No. 14. On July 23, 2013, the court granted summary judgment for the Appellees. Appellants then filed a notice of appeal on August 12, 2013.[1]

The Appellants now respectfully request that the Court expedite this appeal. The SEC and Intervenors Amnesty International of the USA and Amnesty International Ltd. have advised Appellants that they consent to expedition and to the briefing schedule requested in this motion.

Under 28 U.S.C. § 1657, a "court shall expedite the consideration of any action . . . if good cause therefor is shown." Good cause exists to expedite an action if "the delay will cause irreparable injury and . . . the decision under review is subject to substantial challenge," or if "the public generally, or . . . persons not before the Court, have an unusual interest in prompt disposition."

[1] The district court entered a memorandum opinion and a separate order denying Appellants' motion for summary judgment and granting Appellee and Intervenor-Appellees' cross-motions for summary judgment, thereby disposing of all claims in the case. It is unclear whether the district court intended the order to act as the separate judgment that Federal Rule of Civil Procedure 58(a) requires. Counsel contacted chambers to inquire and was informed that the district court ordinarily does not enter separate judgments when disposing of a case upon motions for summary judgment. Counsel also contacted the district court clerk's office, and was informed that the Clerk does not enter judgments, considering it a matter for chambers. *See* Fed. R. Civ. P. 58(b)(1). The notice of appeal is effective whether or not a separate judgment has been entered. *FirsTier Mortg. Co. v. Investors Mortg. Ins. Co.*, 498 U.S. 269, 277 (1991); *Outlaw v. Airtech Air Conditioning and Heating, Inc.*, 412 F.3d 156, 162-63 (D.C. Cir. 2005).

U.S. Court of Appeals for the D.C. Circuit, *Handbook of Practice and Internal Procedures* at 33 (2011). Both of these standards are satisfied here.

1. First, delay will cause Appellants irreparable injury because the Rule will impose extraordinary costs upon them which cannot be recovered. Appellants are a trade association, a business federation, and an association of chief executive officers, collectively representing thousands of publicly traded companies, many of which are burdened with the astronomical costs of the Rule. Many of Appellants' members are public companies which manufacture or contract to manufacture products that may contain tin, tantalum, tungsten, gold, or their related ores. These minerals are widely used throughout manufacturing. Complex products, moreover, may contain thousands of separate parts, each with its own extensive supply chain that can involve layers of separate companies within the United States and abroad. The Rule therefore requires them to expend enormous sums attempting to determine whether they manufacture or contract to manufacture products covered by the Rule, whether minerals present in their products may have originated in the DRC or one of the nine adjoining countries, and whether the minerals may have been derived from ores obtained from mines that are or were under the control of certain armed groups at particular points in time, as well as to prepare and file disclosures or reports. As noted, the SEC has acknowledged that compliance

with the Rule will cost companies hundreds of millions of dollars for each compliance period, in addition to billions of dollars for initial compliance.

Appellants' members have already incurred some of the Rule's costs while this litigation is ongoing, since the first compliance period began on January 1, 2013. The expedited review schedule that Appellants propose, however, with briefing concluding in November of 2013, will greatly increase the possibility that the case can be decided before the first disclosures and reports under the Rule would be due, in May of 2014. If Appellants' challenge is successful, expedited consideration would help spare Appellants at least some of the costs of preparing, auditing, and filing the reports, as well as the costs of ongoing compliance in 2014. It would also spare Appellants the irreparable First Amendment injury of being forced to state on their own websites that certain of their products have not been found to be "DRC conflict free."

Moreover, the appeal raises substantial legal challenges to the Rule and the decision below. Among other errors, the Commission's economic analysis of the Rule is grossly inadequate, in violation of 15 U.S.C. § 78c(f) and 15 U.S.C. § 78w(a)(2). Indeed, the Commission never estimated the benefits of the Rule and even acknowledged that there might be no benefits at all. 77 Fed. Reg. at 56,335.

The Commission also misinterpreted Section 1502. For example, it wrongly concluded that the statutory text left it no authority to create a *de minimis* exception despite its general exemptive authority, wrongly interpreted the term "manufacture" as including those who "contract to manufacture," and wrongly interpreted the term "did originate" to mean "reason to believe . . . may have originated." *Id.* at 56,280, 56,290, 56,298. In addition, 15 U.S.C. § 78m(p) compels speech in violation of the First Amendment.

2. Finally, non-parties and the public at large also have an unusual and exceedingly strong interest in prompt disposition of this case. Other companies are suffering many of the same harms from the Rule discussed above. In fact, non-public companies from all across the globe incur costs because they are part of the global supply chains that provide products to public companies, and thus must participate in the "reasonable country of origin inquiry" and "due diligence" mandated by the Rule. 77 Fed. Reg. at 56,288. The Rule is also of widespread public interest: It received thousands of public comments, including comments from members of Congress, executive departments, and international organizations. Expedited review will help to ensure that outstanding uncertainty about the validity of the Rule and the statute will be resolved as soon as feasible.

As noted above, Appellants have consulted with the SEC and Intervenors concerning this motion, and the SEC and Intervenors have advised

that they consent to expedited consideration. Appellants, the SEC, and Intervenors have agreed upon the following proposed briefing schedule:

Appellants' Opening Brief	September 11, 2013
Briefs of Any Amici In Support of Appellants	September 18, 2013
Appellee's Brief	October 23, 2013
Briefs of Intervenor-Appellees And Any Amici In Support of Appellees	October 30, 2013
Appellants' Reply Brief	November 13, 2013

For the foregoing reasons and good cause shown, Appellants respectfully request that consideration of this matter be expedited, that the Court issue an order setting the above briefing schedule, and that the Court direct the Clerk to schedule oral argument on the earliest available date following the completion of briefing.

Dated: August 14, 2013

Respectfully submitted,

/s/ Peter D. Keisler

Peter D. Keisler
Counsel of Record
Jonathan F. Cohn
Erika L. Myers
Sidley Austin LLP
1501 K St., NW
Washington, DC 20005
202.736.8027
Counsel for Appellants the National Association of Manufacturers, the Chamber of Commerce of the United States of America, and Business Roundtable

Of Counsel:
Rachel L. Brand
Steven P. Lehotsky
National Chamber Litigation Center, Inc.
1615 H St., NW
Washington, DC 20062
202.463.5337
Counsel for Appellant the Chamber of Commerce of the United States of America

Of Counsel:
Quentin Riegel
National Association of Manufacturers
733 10th St., NW
Suite 700
Washington, DC 20001
202.637.3000
Counsel for Appellant the National Association of Manufacturers

Of Counsel:
Maria Ghazal
Business Roundtable
300 New Jersey Ave., NW
Suite 800
Washington, DC 20001
202.496.3268
Counsel for Appellant Business Roundtable

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of August, 2013, I caused the foregoing Motion to Expedite to be filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the CM/ECF system. Service was accomplished on all parties via the Court's CM/ECF system, including the following:

Tracey A. Hardin, hardint@sec.gov;

Benjamin L. Schiffrin, schiffrinb@sec.gov;

Daniel Staroselky, staroselkyd@sec.gov;

Julie A. Murray, jmurray@citizen.org;

Adina Rosenbaum, arosenbaum@citizen.org.

/s/ Peter D. Keisler
Peter D. Keisler