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,	)	
Petitioners,	)	No. 12-1422
vs.	)	
UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	)	
Respondent.	)	

PETITIONERS' 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 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 cost companies $3 to $4 billion, and annual compliance will cost an additional $200 to $600 million per year.[1] *Id.* at 56,334.

Petitioners filed a petition for review of this Rule on October 22, 2012, and now respectfully request expedited consideration. The SEC has advised Petitioners that it consents to expedition and to the briefing schedule requested in this motion.

28 U.S.C. § 1657 provides that a "court shall expedite the consideration of any action . . . if good cause therefor is shown." Good

[1] These estimates are low. Some commenters on the Rule calculated that costs would be substantially higher. *See* National Association of Manufacturers ("NAM") Comment Letter at 2 (Mar. 2, 2011) (estimating implementation costs at $9-16 billion); Tulane University Comment Letter at 32 (Oct. 17, 2011) (estimating implementation costs at nearly $8 billion).

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." D.C. Circuit *Handbook of Practice and Internal Procedures* 33 (2011). Both of these standards are satisfied here.

First, delay will cause Petitioners irreparable injury because implementation of the Rule will impose extraordinary costs upon them. 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—many of which may have no direct dealings with any of the other companies except for those immediately adjacent in the chain. As noted, the SEC has acknowledged that attempting to make the determinations required by this Rule, and the other actions required for initial compliance, will cost American industry billions of dollars, and that subsequent compliance will cost hundreds of millions of dollars every year. Moreover, companies have already started incurring these costs in preparation for the Rule's first compliance period, which begins January 1, 2013. 77 Fed. Reg. at 56,274. The second compliance

period begins January 1, 2014, and issuers must file the first Conflict Minerals Reports by May 31, 2014. *Id.*

Petitioners are a trade association, a business federation, and an association of chief executive officers, collectively representing thousands of companies, many of which are affected by the Rule. *See* NAM Comment Letter at 1 (Mar. 2, 2011) ("[NAM] is the nation's largest industrial trade association . . . ."); Chamber of Commerce of the United States of America Comment Letter at 1 (Feb. 28, 2011) ("The [Chamber] is the world's largest business federation representing the interests of over three million companies of every size, sector, and region."); Business Roundtable Comment Letter at 1 (Mar. 2, 2011) ("Member companies comprise nearly a third of the total value of the U.S. stock market . . . ."). Many of Petitioners' members are public companies which manufacture or contract to manufacture products that may contain tin, tantalum, tungsten, gold, or their related ores. The Rule will therefore require 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 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.

Petitioners' members will unavoidably have to incur some portion of the Rule's costs while this litigation is ongoing, as the first compliance period begins in less than two months. However, the expedited review schedule that Petitioners propose, with briefing concluding in March of 2013, will greatly increase the possibility that the case can be decided before the end of 2013. Petitioners' challenge to the Rule would then be resolved well before the first disclosures and reports under the Rule would be due, in May of 2014, and preferably before the start of the Rule's second compliance period, in January of 2014. If Petitioners' challenge is successful, expedited consideration would help Petitioners avoid the astronomical costs of finalizing compliance infrastructure, preparing disclosures, preparing and obtaining private sector audits of reports, and beginning a second year of compliance.

The petition for review will raise substantial legal challenges to the Rule. 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.

Furthermore, the Commission 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 by forcing companies to state that certain of their products are not "DRC conflict free."

Finally, non-parties and the public at large have an unusual and exceedingly strong interest in prompt disposition of this case. Other companies that are not members of Petitioners will suffer many of the same harms from the Rule discussed above. In fact, non-public companies from all across the globe will incur costs because they are part of the global supply chains that provide products to public companies, and will thus have to 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, Petitioners have consulted with the SEC concerning this motion, and the SEC has advised that it consents to expedited consideration. Petitioners and the SEC have agreed upon the following proposed briefing schedule:

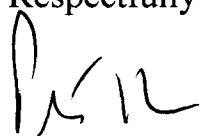
Petitioners' Opening Brief	January 18, 2013
Respondent's Brief	March 4, 2013
Briefs of Any Intervenors Or Amici In Support of Respondents	March 11, 2013
Petitioners' Reply Brief	March 25, 2013
Deferred Appendix	March 27, 2013
Final Briefs	March 29, 2013

For the foregoing reasons and good cause shown, Petitioners 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: November 21, 2012

Respectfully submitted,



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