IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL ASSOCIATION OF MANUFACTURERS 733 10th St., NW Suite 700 Washington, DC 20001, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA 1615 H St., NW Washington, DC 20062, BUSINESS ROUNDTABLE 300 New Jersey Ave., NW Suite 800 Washington, DC 20001, Plaintiffs, vs. UNITED STATES SECURITIES AND EXCHANGE COMMISSION 100 F St., NE Washington, DC 20549, Defendant, AMNESTY INTERNATIONAL OF THE USA 5 Penn Plaza 16th Floor New York, NY 10001 AMNESTY INTERNATIONAL LTD. 1 Easton Street, London WC1X 0DW United Kingdom, Intervenors-Defendants.	No. 1:13-cv-00635-RLW

JOINT STATUS REPORT

On August 22, 2012, the Securities and Exchange Commission ("SEC" or "Commission") adopted Rule 13p-1 and Form SD, *Conflict Minerals*, 77 Fed. Reg. 56,274 (Sept. 12, 2012), promulgated pursuant to Section 1502 of the Dodd-Frank Act, 15 U.S.C. § 78m(p). Plaintiffs filed a petition for review of this Rule in the U.S. Court of Appeals for the District of Columbia Circuit on October 19, 2012, amending it on October 22. Plaintiffs then filed an unopposed motion to expedite the action, which the Court granted. Intervenors-Defendants Amnesty International of the USA and Amnesty International Limited (collectively, Amnesty International) filed an unopposed motion to intervene in the District of Columbia Circuit, which the Court also granted. Under the expedited schedule, briefing concluded on March 28, 2013, and oral argument was set for May 15, 2013.

On April 26, 2013, the Court of Appeals held that it lacked jurisdiction of the petition for review in *American Petroleum Institute v. SEC*, No. 12-1398, 2013 WL 1776467, and that jurisdiction lies instead in the District Court. Because *American Petroleum Institute* presented the same jurisdictional issue as this case, on April 30, 2013, plaintiffs filed an unopposed motion to transfer this case to this Court under 28 U.S.C. § 1631. The motion explained that a transfer was "in the interest of justice" because the parties had reasonably believed that the Court of Appeals had jurisdiction, and because transfer would help to avoid delay that would harm the parties and the public at large. Petr's Mot. to Transfer. On May 2, 2013, the Court of Appeals granted the motion, and transferred the case to this Court.

The parties now submit this Joint Status Report as directed by the Court's Order of May 6, 2013, as well as the attached Proposed Scheduling Order. The parties respectfully request that the Court expedite consideration of the case, treat the petition for review as a

complaint, and decide this case on the basis of the briefing already transferred to this Court from the Court of Appeals.

DISCUSSION

The parties respectfully request that the Court, like the D.C. Circuit, expedite this action. Under 28 U.S.C. § 1657, a "court shall expedite the consideration of any action . . . if good cause therefor is shown." The parties agree that expedited consideration of this case will increase the probability of final resolution of plaintiffs' challenge prior to some of the applicable compliance dates under the Rule, and will help avoid litigation that might otherwise occur regarding the propriety of a stay.

In addition, plaintiffs seek expedition for the same reasons they sought expedition in the Court of Appeals. Plaintiffs argued in seeking expedition in the Court of Appeals that delay in this case "will cause irreparable injury" and "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); Petr's Consent Mot. to Expedite (filed Nov. 21, 2012). Plaintiffs also argued that the challenged Rule will impose significant costs upon plaintiffs' members. 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. 77 Fed. Reg. at 56,334.

Plaintiffs' members will unavoidably have to incur some portion of the Rule's costs while this litigation is ongoing, as the first compliance period has already begun. *Id.* at 56,274. However, the second compliance period does not begin until January 1, 2014, and issuers must file the first Conflict Minerals Reports on May 31, 2014. *Id.* at 56,274, 56,280. As plaintiffs explained in successfully seeking expedited consideration before the Court of Appeals, a decision before those dates would, if plaintiffs' challenge is successful, help

plaintiffs' members avoid the costs of finalizing compliance infrastructure, preparing disclosures, preparing and obtaining private sector audit reports, and beginning a second year of compliance.

Furthermore, expedited review would also serve the strong interests of non-parties and the public at large in prompt disposition of this case. Many companies that are part of the global supply chains that provide products to public companies will also incur costs under the Rule. *Id.* at 56,350. And expedition will help to ensure that outstanding uncertainty about the validity of the Rule—which received thousands of public comments, including comments from members of Congress, executive departments, and international organizations—will be resolved as soon as feasible.

Time is even more crucial now than when the Court of Appeals granted expedited review. Six months have passed, and the parties may now have to proceed through two levels of review, this Court and the Court of Appeals.

1. To facilitate expedited resolution of this action, the parties request that plaintiffs' amended petition for review be treated as a complaint. This procedure is consistent with one of the purposes of 28 U.S.C. § 1631, which provides that a transferred case "shall proceed as if it had been filed in … the court to which it is transferred on the date upon which it was actually filed in … the court from which it is transferred" (here October 22, 2012), and seeks to ensure the efficient continuation of the litigation. The amended petition for review commenced the action in the Court of Appeals, thereby serving the role that a complaint plays in a civil action in District Court under Federal Rule of Civil Procedure 3. Accordingly, the petition for review can and should be treated as a complaint now that the case has been transferred to this Court under 28 U.S.C. § 1631. Treating the amended petition for review as a complaint will also serve the purposes of § 1631 by

avoiding "time-consuming and justice-defeating" delay and duplication of effort. *Miller v. Hambrick*, 905 F.2d 259, 262 (9th Cir. 1990), *quoting Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 467 (1962).

2. The parties jointly propose to waive responsive pleadings from the Commission and Amnesty International, as well as the exchange of initial disclosures under Rule 26(a)(1) of the Federal Rules of Civil Procedure. The parties jointly agree that waiver of responsive pleadings shall not constitute an admission of any of plaintiffs' allegations in this litigation. The parties further jointly agree that Amnesty International of the USA and Amnesty International Limited are Intervenors-Defendants as reflected on this Court's docket and that there is no need for further briefing regarding their intervenor status.

3. To further facilitate expedited consideration of this case, the parties request that the case be decided on the briefing transferred to this Court from the D.C. Circuit (as well as any oral argument the Court chooses to have). The parties request that plaintiffs' opening D.C. Circuit brief be treated as a motion for summary judgment and memorandum of law in support of their motion for summary judgment; the Commission's and Amnesty's D.C. Circuit briefs be treated as oppositions to plaintiffs' motion and as cross-motions for summary judgment and memoranda of law in support of those cross-motions; and plaintiffs' D.C. Circuit reply brief be treated as a reply in support of their motion for summary judgment and as an opposition to the cross-motions.[1] The parties agree there is no need for further briefing.

[1] Because the Court of Appeals briefs were submitted in 14-point font in accordance with that Court's rules, they contain more pages than this Court's rules provide for motions. However, the briefs' length, if printed in 12-point type, is consistent with this Court's limitations. Plaintiffs' opening brief, for example, would be 44 pages if reduced to 12-point font. Plaintiffs' reply brief, in turn, would be 22 pages. The parties respectfully submit that it would involve needless effort and delay to re-format the briefs already transferred to this

Again, this procedure is consistent with one of the purposes of § 1631. This case was fully briefed for decision before the D.C. Circuit, and should be treated as fully briefed before this Court as well. All issues that would bear on this Court's resolution of the cross-motions for summary judgment are thoroughly covered in the completed D.C. Circuit briefing, and the additional delay and expense of beginning the briefing process anew would, as explained above, harm the parties and the public at large.

The parties respectfully further propose that within seven days of this Court's entry of a Scheduling Order, for the Court's convenience, all parties will submit paper copies of their briefs transferred to this Court from the Court of Appeals.

4. The parties request that the Certified Index of the Record filed in the Court of Appeals pursuant to Federal Rule of Appellate Procedure 17(b), and transferred to this Court as a part of the appellate record in this case, be deemed to satisfy the obligation to separately file or lodge a copy of the applicable administrative record with the Clerk of Court. In light of the size of the administrative record, reliance on this index in lieu of the filing of the record itself will conserve both judicial and agency resources. A similar procedure was followed by this Court in *International Swaps and Derivatives Ass'n v. United States Commodity Futures Trading Commission*, No. 11-cv-2146 (RLW) (D.D.C.). In addition, the parties propose that within seven days of this Court's entry of a Scheduling Order, plaintiffs will submit courtesy paper copies of the joint appendix transferred to this Court from the Court of Appeals, containing the applicable portions of the administrative record. *See* L. Civ. R. 7(n).

5. Due to the nature of the proceedings, the parties jointly propose to dispense with the scheduling and conference procedures of Rules 16 and 26(f) of the Federal Rules of

---

Court.

Civil Procedure, and to substitute this memorandum and such other reports as the Court may request in place of the report ordinarily required under Rule 26(f). As the parties are in agreement and collectively believe that a Status Conference will not be necessary, they respectfully request, pursuant to the Court's Order of May 6, 2013, vacatur of the Status Conference.

CONCLUSION

For the foregoing reasons, the parties respectfully request that this Court (1) expedite consideration of the parties' cross-motions for summary judgment, (2) treat plaintiffs' amended petition for review as a complaint, (3) decide the parties' cross-motions for summary judgment on the papers transferred to this Court from the D.C. Circuit pursuant to 28 U.S.C. § 1631, and, if the Court believes that oral argument would be beneficial to it, on oral argument before this Court,[2] (4) dispense with the requirement of responsive pleadings from the Commission and Amnesty International, a pretrial conference under Rule 16, initial disclosure under Rule 26(a)(1), and the conference required by Rule 26(f), and conclude that no briefing on intervention is necessary and that Amnesty International of the USA and Amnesty International Limited's continued participation as parties in the case is proper, and (5) substitute this report and such other reports as the court may order for the report required by Rule 26(f). A proposed Scheduling Order to this effect is attached.

Dated: May X, 2013 Respectfully submitted,

[2] Counsel for plaintiffs will be unavailable the week of June 10, counsel for Amnesty International will be unavailable June 18-21 and August 2-7, and counsel for the Commission will be unavailable May 29 (for oral argument in the U.S. Court of Appeals for the Second Circuit) and the weeks of July 29 and August 4. The parties respectfully request that any hearing not be set for these time periods.

s/ Peter D. Keisler

Peter D. Keisler, Bar No. 417204
Counsel of Record
Jonathan F. Cohn, Bar No. 476551
Sidley Austin LLP
1501 K St., NW
Washington, DC 20005
202.736.8027
Counsel for Plaintiffs the National Association of Manufacturers, the Chamber of Commerce of the United States of America, and Business Roundtable

Anne K. Small
Michael A. Conley
John W. Avery
Tracey A. Hardin, GA Bar No. 324996
Benjamin L. Schiffrin, NY Bar No. 4277117
Daniel Staroselsky, IL Bar No. 6292004
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
202.551.5774
staroselskyd@sec.gov
Counsel for Defendant Securities and Exchange Commission

Julie A. Murray, Bar No. 1003807
Adina H. Rosenbaum, Bar No. 490928
Scott L. Nelson, Bar No. 413548
Public Citizen Litigation Group
1600 20th St., NW
Washington, DC 20009
(202) 588-1000
jmurray@citizen.org
Counsel for Intervenors-Defendants Amnesty International of the USA and Amnesty International Limited

Of Counsel:
Rachel L. Brand
National Chamber Litigation Center, Inc.
1615 H St., NW
Washington, DC 20062
202.463.5337
Counsel for Plaintiff 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 Plaintiff 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 Plaintiff Business Roundtable

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2013, I caused the foregoing Joint Status Report and attached Proposed Scheduling Order to be filed with the Clerk of Court for the United States District Court for the District of Columbia using the CM/ECF system. Service was accomplished on all parties via the Court's CM/ECF system.

May 15, 2013

s/ Peter D. Keisler

Peter D. Keisler