ARGUED JANUARY 7, 2014; DECIDED APRIL 14, 2014

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL ASSOCIATION OF MANUFACTURERS, *et al.*, *Plaintiffs-Appellants*,	)	
v.	)	
U.S. SECURITIES AND EXCHANGE COMMISSION, *Defendant-Appellee*,	)	Case No. 13-5252
and	)	
AMNESTY INTERNATIONAL USA, AMNESTY INTERNATIONAL LIMITED, *Intervenors-Appellees*.	)	

OPPOSITION OF INTERVENORS-APPELLEES AMNESTY INTERNATIONAL USA AND AMNESTY INTERNATIONAL LIMITED TO APPELLANTS' EMERGENCY MOTION FOR A STAY OF THE SEC'S CONFLICT MINERALS RULE

CERTIFICATE OF PARTIES AND AMICI

The National Association of Manufacturers, the Chamber of Commerce of the United States of America, and Business Roundtable were originally petitioners in this action, *see* Case No. 12-1422 (D.C. Cir.), were plaintiffs in the district court after the case was transferred, and are appellants in this Court.

The U.S. Securities and Exchange Commission was a respondent in Case No. 12-1422, was a defendant in the district court, and is an appellee in this Court.

Amnesty International USA and Amnesty International Limited were intervenors-respondents in Case No. 12-1422, were intervenors-defendants in the district court, and are intervenors-appellees in this Court.

The following parties appeared as amici in Case No. 12-1422 and in the district court, and now appear in this Court on direct appeal:

> Professor Marcia Narine; Ambassador Jendayi Frazer; Dr. J. Peter Pham
>
> American Coatings Association, Inc.; American Chemistry Council; Can Manufacturers Institute; Consumer Specialty Products Association; Precision Machined Products Association; The Society of the Plastics Industry, Inc; and the National Retail Federation
>
> Better Markets, Inc.
>
> Senator Barbara Boxer; Senator Dick Durbin; Former Congressman Howard Berman; Congressman Wm. Lacy Clay; Congressman Keith Ellison; Congressman Raul Grijalva; Congressman John Lewis; Senator Ed Markey; Congressman Jim McDermott; Congresswoman Gwen Moore; Congresswoman Maxine Waters

Global Witness Limited; Fred Robarts; Gregory Mthembu-Salter

The following parties have appeared for the first time as amici in this case on appeal:

American Petroleum Institute

Retail Litigation Center, Inc.

Congressman Elliot Engel

The following party appeared as an amicus in Case No. 12-1422 and in the district court:

Former Senator Russ Feingold

/s/ Julie A. Murray
Julie A. Murray

CORPORATE DISCLOSURE STATEMENT

Amnesty International USA and Amnesty International Limited are non-profit organizations. Neither organization has a parent corporation. No publicly-held company has a 10% or greater ownership interest in either organization. The general purpose of the organizations is to do research and take action to end grave abuses of human rights around the world.

/s/ Julie A. Murray
Julie A. Murray

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

** Authorities upon which we chiefly rely are marked with asterisks.*

STATUTES AND RULES

MISCELLANEOUS

INTRODUCTION AND SUMMARY OF ARGUMENT

Since January 2013, when the Conflict Minerals Rule took effect, issuers have been developing the infrastructure to comply with the rule and bearing front-loaded expenses associated with that process. Investors and consumers have been counting on the availability of the disclosures due on June 2, 2014, which will finally fulfill a four-year-old congressional mandate to address—through corporate accountability and transparency—conflict and the humanitarian crisis in the Democratic Republic of the Congo (DRC). In the meantime, in its April 14, 2014, decision, this Court rejected a slew of plaintiffs' meritless challenges to the rule, clearing the way for the rule's continued application. Although the Court invalidated on First Amendment grounds a narrow requirement that some companies use the specific descriptor of "not been found to be DRC conflict free" in describing their products, the Court made clear that plaintiffs' challenge did not extend to the remainder of the rule's reporting and disclosure regime.

Plaintiffs now take the remarkable step of seeking an emergency stay of the entire Conflict Minerals Rule, arguing that compliance costs are causing their members irreparable economic injury and that the district court on remand will likely vacate the entire rule. Plaintiffs provide no explanation for failing to seek a preliminary injunction against the rule in the year and a half in which the rule has been in effect, during which time plaintiffs' members have borne the cost of

compliance. And they offer no justification for waiting three weeks after this Court's decision before filing their stay motion and requesting a two-week turnaround to stop the June 2 reporting deadline about which plaintiffs have known for more than nineteen months.[1]

No stay is warranted. First, plaintiffs have no realistic probability of convincing the district court that it must vacate the entire rule on the ground that the invalidated provision cannot be severed from the remainder of the rule. As an initial matter, plaintiffs waived the severability argument that they now make. In any event, the presence of a severability statement in the rule leaves no doubt that the Securities and Exchange Commission (SEC) would have adopted the rule it did even in the absence of the provision that the Court has stricken. And plaintiffs' contention that the rule must be vacated because it no longer makes sense is misguided and contrary to plaintiffs' earlier position. The remaining disclosures—although not as effective as those required by the rule before this Court's decision—retain critical importance to investors and consumers. Plaintiffs' contention that these remaining disclosures are worthless is also at odds with their contention before this Court that the descriptors to which they objected are

[1] Although plaintiffs sought a stay from the Securities and Exchange Commission on April 29, 2014, with a requested response date of May 1, they bypassed the district court entirely, contrary to this Court's general rule for requests for emergency relief on direct appeal. *See* D.C. Cir. R. 8(a)(1); *see also* Fed. R. App. P. 8(a)(1).

unnecessary to meet the transparency goals of Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1376 (Dodd-Frank Act). Plaintiffs prevailed on that rationale and should be judicially estopped from taking the opposite position now.

Second, plaintiffs have not demonstrated irreparable injury to warrant a stay. Routine compliance costs associated with a statutory or regulatory mandate while litigation proceeds are not a cognizable harm, much less an irreparable one, sufficient to warrant a stay. In addition, the vast majority of compliance costs on which plaintiffs rely have already been expended by plaintiffs' members, and plaintiffs' delay in addressing those costs supports finding that the asserted injury is not irreparable.

Third, the public interest and the interests of investors and consumers like intervenor-appellee Amnesty International strongly weigh against issuance of a stay. Congress mandated that the SEC adopt the Conflict Minerals Rule to address conflict and humanitarian crisis in the DRC, and it gave the agency a strict deadline for doing so. The agency missed that deadline, resulting in substantial delay of Congress's mandate. It would ill-serve the public's interest in enforcement of a valid statute—especially one with Section 1502's important foreign policy goals—to further delay the entire rule by the issuance of a stay. In addition, investors and consumers are counting on the disclosures due June 2, 2014, to

inform their decisions. These disclosures will provide important information about a company's sourcing practices, risk exposure, and due diligence measures. Staying the rule will deny to the public this important information, once again leaving it to non-governmental organizations to research independently firms' sourcing practices, and to do so at far greater expense and far less effectively than having companies investigate and disclose this information themselves.

In short, none of the factors relevant to this Court's inquiry favors issuance of a stay. The only emergency in this case is the dire conflict and humanitarian crisis in the DRC, and the true irreparable harm here is the enormous suffering endured by the Congolese people. Plaintiffs' motion for a stay is a last-ditch effort to keep the public in the dark. It should be denied.

STANDARD OF REVIEW

A stay is an exercise of this Court's discretion, not "a matter of right." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (internal quotation marks omitted). This Court considers four factors when determining whether to grant a stay: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.* at 434 (internal quotation marks omitted). As the party moving for a stay, plaintiffs "bear[] the burden of

showing that the circumstances justify an exercise of that discretion." *Id.* at 433-34.[2]

ARGUMENT

I. Plaintiffs Have No Realistic Likelihood of Success on the Question Whether the Conflict Minerals Rule Should Be Vacated in Full.

Plaintiffs contend that a stay of the Conflict Minerals Rule is warranted because the district court on remand is likely to vacate the entire rule. Specifically, they speculate that the district court is likely to determine that the narrow portion of the rule invalidated by this Court is not severable from the remainder of the rule, either because there is "substantial doubt" as to whether the SEC would have adopted the rule in the absence of the invalidated portion or because the rule cannot "function sensibly without the stricken provision." Stay Mot. at 10 (internal quotation marks omitted). Plaintiffs' latest effort to eviscerate the Conflict

[2] The relief plaintiffs seek is actually more akin to a preliminary injunction than a stay because plaintiffs aim to restrain enforcement of a generally-applicable rule rather than to "halt[] or postpon[e]" a judicial proceeding or an administrative adjudication. *Nken*, 556 U.S. at 428-30 & n.1. But if plaintiffs actually seek a stay, the standard may be more stringent than the standard for a preliminary injunction. After *Nken*, a movant for a stay must "satisf[y] the first two factors"—that is, demonstrate both likelihood of success on the merits and irreparable harm—before the Court even considers whether the other two factors also favor a stay. 556 U.S. at 435. This Circuit has not resolved an open question in the preliminary injunction context as to whether a sliding-scale approach that accounts for the strength of a movant's showing on all four factors applies. *See, e.g.*, *Aamer v. Obama*, 742 F.3d 1023, 1043 (D.C. Cir. 2014). Under either standard, however, the motion should be denied.

Minerals Rule is extremely unlikely to succeed on the merits. On this ground alone, a stay should be denied.

A. As an initial matter, plaintiffs waived their severability argument by failing to raise it previously in this Court. *See, e.g.*, *XO Miss., Inc. v. City of Md. Heights*, 362 F.3d 1023, 1025 (8th Cir. 2004) (holding that party waived challenge to district court's severability determination regarding an ordinance by failing to address the issue on appeal); *Am. Meat Inst. v. Pridgeon*, 724 F.2d 45, 47 (6th Cir. 1984) (holding that party waived argument on severability of a state statute by raising it for the first time in a motion for reconsideration). Plaintiffs' contention that vacatur of the entire rule is appropriate was limited to their statutory and cost-benefit arguments. *See* Appellants' Opening Br. at 51-52. They never argued to this Court that vacatur would be necessary based on the asserted First Amendment infirmity of the requirement that this Court invalidated. *Id.* at 52-58. As a result, this Court unsurprisingly dealt only with plaintiffs' challenge to "the requirement that an issuer describe its products as not 'DRC conflict free' in the report it files with the Commission and must post on its website." Slip Op. at 17. It never suggested, including in the remand portion of its opinion, that the district court should review the entire rule anew to determine whether it can remain in effect, as the plaintiffs now belatedly urge. *See id.* at 23; *see also* Slip Op. at 4 (Srinivasan, J., concurring in part) (explaining that the Court could have delayed ruling on the

First Amendment question by issuing a stay for the "aspect of the SEC's rule" implicated by plaintiffs' "narrowly focused" First Amendment challenge).

B. There is also no doubt—much less a substantial one—that the SEC would have adopted the portions of the Conflict Minerals Rule remaining intact after this Court's decision. The SEC had no discretion to forgo adopting the Conflict Minerals Rule altogether or its key components. Congress directed the SEC to adopt the rule within 270 days of the statute's enactment. Dodd-Frank Act, *id.* § 1502(b), *codified at* 15 U.S.C. § 78m(p)(1)(A). And it provided the SEC with clear guidelines by defining which companies to cover, making clear certain points that companies' disclosures must include, and identifying when disclosure requirements may be revised, waived, or terminated. *Id.*, *codified at* 15 U.S.C. § 78m(p)(1)-(3). In the face of this congressional mandate, it defies belief to contend that the SEC would have adopted any rule lacking these critical features.

Moreover, in adopting the Conflict Minerals Rule, the SEC included a severability statement providing that "[i]f any provision of this rule . . . is held to be invalid, such invalidity shall not affect other provisions . . . that can be given effect without the invalid provision." Conflict Minerals, Final Rule, 77 Fed. Reg. 56,274, 56,333 (Sept. 12, 2012). The SEC's severability statement "creates a presumption" that the agency did not intend the entire rule to hinge on the invalidity of a single provision. *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 686

(1987); *see also MD/DC/DE Broadcasters Ass'n v. FCC*, 236 F.3d 13, 22 (D.C. Cir. 2001) ("Here, the Commission clearly intends that the regulation be treated as severable, to the extent possible, for it said so in adopting the regulation."). That presumption can be overcome only by "strong evidence" that the SEC intended otherwise, *Alaska Airlines*, 480 U.S. at 686—a burden that the plaintiffs do not even attempt to meet. Indeed, that the SEC issued guidance indicating that it will enforce the majority of the rule after this Court's ruling and denied plaintiffs' motion to stay the entire rule provides dispositive evidence that the agency views the portion of the rule held invalid as severable. *See* Keith F. Higgins, Director, SEC Division of Corporate Finance, Statement on the Effect of the Recent Court of Appeals Decision on the Conflict Minerals Rule (Apr. 29, 2014), *available at* http://www.sec.gov/News/PublicStmt/Detail/PublicStmt/1370541681994#.U2wL8Ya8Yik (hereinafter, Higgins Statement); SEC, Order Issuing Stay (May 2, 2014), *available at* http://www.sec.gov/rules/other/2014/34-72079.pdf.

C. Plaintiffs also contend that the rule must be vacated because the remaining disclosures and reports are "worthless" without the descriptor requirement held unconstitutional. Stay Mot. at 13. Plaintiffs' contention, however, is directly contrary to a position they took earlier in these proceedings and on which they prevailed. Specifically, this Court held that the requirement that companies state that their products have "not been found to be DRC conflict free"

cannot survive First Amendment intermediate scrutiny because the "fit" between the means and ends is not "reasonable." Slip Op. at 21 (internal quotation marks omitted). The Court pointed to the plaintiffs' "suggest[ion]" that Congress's goal could instead be furthered by having the SEC "compile its own list of products that it believes are affiliated with the Congo war, *based on information the issuers submit to the Commission*." *Id.* at 22 (emphasis added); *see also* Appellants' Opening Br. at 56-57. The Court concluded that "if issuers can determine the conflict status of their products from due diligence, then surely the Commission can use *the same information* to make *the same determination*." Slip Op. at 22 (emphasis added).

Simply put, plaintiffs cannot have it both ways. They prevailed on the merits of their First Amendment claim by contending that the unchallenged portion of the disclosure and reporting regime retained its value, both for the SEC and—implicitly—the public. That argument informed the Court's determination that the fit between Section 1502's goals and the challenged disclosure requirement is not reasonable. Accordingly, plaintiffs should be judicially estopped from arguing as a basis for a stay that the remaining disclosures are now "worthless." Judicial estoppel is intended to prevent parties from "deliberately changing positions according to the exigencies of the moment," thereby "playing fast and loose" with the courts." *New Hampshire v. Maine*, 532 U.S. 742, 750 (2001) (internal

quotation marks omitted). Plaintiffs' late-breaking change of position has precisely this effect and should be rejected.

In any event, the remaining disclosure and reporting regime retains significant value to the public. A stay of the entire rule would harm investors and consumers like Amnesty International who have a strong interest in using the information disclosed under the Conflict Minerals Rule. Even after this Court's ruling, companies must "disclose their reasonable country of origin inquiry and briefly describe the inquiry they undertook." Higgins Statement. Companies required to file Conflict Minerals Reports must likewise describe their due diligence measures. *Id.* Contrary to plaintiffs' claim that this information is "worthless," Stay Mot. at 13, the information will enable investors to evaluate (though not as effectively as under the original rule) a company's "risk exposure to sourcing from conflict[] zones and the company's approach to managing those risks." JA 126, Comment from Lauren Compere, Boston Common Asset Management, et al.; *see also* Decl. of Suzanne Nossel, then-executive director of Amnesty International USA (AIUSA), ¶¶ 14-15 (attached as addendum to Amnesty International Dist. Ct. Response Br.) (stating that AIUSA will rely on the disclosures to assess, in part, "the extent to which companies have conducted appropriate due diligence inquiries with respect to conflict minerals" and will use that information to make investment decisions).

In addition, although this Court barred the SEC from compelling issuers to "report to the [agency] [or] to state on their website that any of their products have 'not been found to be DRC conflict free,'" Slip Op. at 23, it did not preclude disclosure and reporting requirements triggered by that factual predicate. As a result, even after this Court's ruling, companies that cannot determine that their products are DRC conflict free must still "disclose, for those products, the facilities used to produce the conflict minerals, the country of origin of the minerals and the efforts to determine the mine or location of origin." Higgins Statement. While this information on its own is not as standardized as the specific descriptors held unconstitutional by this Court, and will thus make review by investors and consumers less efficient, it remains valuable. Investors and consumers can use the information to determine at least in part whether companies are sourcing conflict minerals from the DRC and whether those minerals may help fund armed groups there. *See*, *e.g.*, Decl. of Michael Bochenek, Director of Law and Policy for Amnesty International's International Secretariat, ¶ 9 (attached as addendum to Amnesty International Dist. Ct. Response Br.) (stating that the International Secretariat will use information about a company's sourcing practices when making organizational purchasing decisions for products such as computers, landline and mobile telephones, and other electronic devices). That investors and

consumers can use the disclosures in these ways rebuts plaintiffs' current claim that the remainder of the rule is useless.

II. Neither Routine Compliance Costs—Most of Which Have Already Been Borne by Companies—Nor Other Harms Asserted by Plaintiffs Constitute Irreparable Injury.

To demonstrate irreparable harm, plaintiffs must "substantiate" that their asserted injury is "both certain and great." *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam). Moreover, the type of injury alleged must be truly irreparable. *Id.* Because plaintiffs have not come close to meeting the "high standard for irreparable injury" set by this Court, their motion for a stay must fail. *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006).

Plaintiffs' asserted injury is primarily based on the cost to their members of complying with the remainder of the rule while litigation is ongoing. Specifically, they contend that many issuers will "have to spend substantial additional funds conducting due diligence and drafting, finalizing, and filing their reports," the first of which are due on June 2. Stay Mot. at 15. Plaintiffs contend that this economic harm is irreparable because sovereign immunity would bar a suit for money damages against the SEC to recoup compliance costs. *Id.* at 14-15.

Plaintiffs' argument misses the mark because "injury resulting from attempted compliance with government regulation ordinarily is not irreparable

harm." *Am. Hosp. Ass'n v. Harris*, 625 F.2d 1328, 1331 (7th Cir. 1980); *accord Freedom Holdings, Inc. v. Spitzer*, 408 F.3d 112, 115 (2d Cir. 2005); *A. O. Smith Corp. v. FTC*, 530 F.2d 515, 527-28 (3d Cir. 1976). As the Third Circuit stated in vacating a preliminary injunction against a government reporting requirement, "[a]ny time a corporation complies with a government regulation that requires corporation action, it spends money and loses profits; yet it could hardly be contended that proof of such an injury, alone, would satisfy the requisite" for relief from the regulation. *A. O. Smith*, 530 F.2d at 527. Rather, under a "basic principle of equity[,] . . . the threatened injury must be, in some way, peculiar." *Id.* (internal quotation marks omitted).

Here, the expenses related to complying with the remaining portion of the Conflict Minerals Rule are simply a cost of doing business in a regulated industry—much like litigation expenses or competition expenses, which are not irreparable injuries. *See FTC v. Standard Oil Co.*, 449 U.S. 232, 244 (1980); *Cities of Anaheim & Riverside v. FERC*, 692 F.2d 773, 779 (D.C. Cir. 1982). The plaintiffs' focus on sovereign immunity (Stay Mot. at 14-15) is thus misplaced. It is the absence of a legally-cognizable injury that would serve as the basis for a right to recover, not the application of sovereign immunity, that will prevent plaintiffs' members from recouping compliance costs.

In addition, even if compliance costs could in some instances constitute irreparable harm, plaintiffs have not "substantiate[d]" that the future costs of which they complain are sufficiently "great" to warrant a stay. *Wis. Gas*, 758 F.2d at 674. Although plaintiffs trot out the SEC's $3 to $4 billion estimate for initial compliance costs (Stay Mot. at 15), the rule went into effect on January 1, 2013, and reports for the 2013 calendar year are due just over three weeks from now. Accordingly, even assuming that companies actually expended amounts equal to the SEC's estimate for initial compliance, *but see*, *e.g.*, Press Release, Claigan Environmental Inc., Update on Industry Status of Conflict Minerals Compliance (Oct. 17, 2013), *available at* http://www.prnewswire.com/news-releases/update-on-industry-status-of-conflict-minerals-compliance-228179531.html (indicating that large issuers' costs of compliance "have been significantly lower than originally projected"), those expenses have already been borne by companies in large part, if not in full. Appellants cite a news article for the proposition that "90% of affected issuers 'still have significant work to do' on their due diligence and conflict minerals reports." Stay Mot. at 15 (quoting Melissa J. Anderson, *Conflict Minerals Ruling Puts Boards in Limbo*, Agenda (Apr. 28, 2014)). That article, however, relied on a survey conducted in February 2014, months before the filing deadline. *See* PwC, 2014 Conflict Minerals Survey: Where Companies Stand on Their Compliance Efforts—This Year and Beyond 2, 22 (2014), *available at*

http://www.pwc.com/en_US/us/audit-assurance-services/publications/assets/pwc-conflict-minerals-compliance-survey-2014.pdf.

Moreover, the SEC's recent guidance, which makes clear that the bulk of the rule will remain in place during litigation but relieves some issuers from the independent audit requirement, *see* Higgins Statement, may reduce costs for many of plaintiffs' members. Responsible issuers have been preparing due diligence filings and Conflict Minerals Reports for many months. Were the SEC to suspend the reporting requirement and instead conduct a new rulemaking, companies might well find themselves subject to a different regime for reporting of the same information collected in calendar year 2013, a duplication of efforts. Moreover, although this Court's ruling did not require the SEC not to enforce the independent audit requirement for certain Conflict Minerals Reports, the SEC's guidance in this regard unquestionably lowers any residual costs to plaintiffs' members during the course of this litigation.

In assessing the veracity of plaintiffs' claim of irreparable harm based on economic injury, this Court may also appropriately consider plaintiffs' substantial delay in seeking relief from the rule. *See, e.g.*, *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1211 (10th Cir. 2009); *Quince Orchard Valley Citizens Ass'n, Inc. v. Hodel*, 872 F.2d 75, 80 (4th Cir. 1989); *Lydo Enter., Inc. v. City of Las Vegas*, 745 F.2d 1211, 1213 (9th Cir. 1984); *see also Gordon v. Holder*, 632 F.3d 722, 725

(D.C. Cir. 2011) (holding that delay alone is an insufficient ground for denying a preliminary injunction but recognizing cases holding that "untimely filings may support a conclusion that the plaintiff cannot satisfy the irreparable harm prong"). Plaintiffs waited nearly a year and a half after the rule, which set forth the companies' corresponding compliance obligations, became effective before they sought a stay, and they have never sought a preliminary injunction. Their contention that compliance costs constitute irreparable harm to their members that warrant an emergency stay thus rings hollow; the vast majority of the costs have already been incurred.

Plaintiffs also assert in broad strokes that they will suffer irreparable harm in the absence of a stay because of "confusion" over how to comply with the rule after this Court's decision, confusion that they suggest might lead to civil liability for statements that their members make in disclosures. Stay Mot. at 15. Plaintiffs' theory in this regard is opaque, but what is clear is that this type of "[b]are allegation[]"—unsubstantiated by any evidence or even any specific explanation as to why this harm is certain as opposed to merely possible—is insufficient to support a finding of irreparable harm. *Wis. Gas*, 758 F.2d at 674; *see also Nken*, 556 U.S. at 434 (mere "possibility of irreparable injury" insufficient (internal quotation marks omitted)). In any event, the SEC has provided clear, concise

guidance on which portions of the Conflict Minerals Rule it intends to enforce during the pendency of this litigation. *See* Higgins Statement.

III. A Stay Will Harm Amnesty International and Other Members of the Public and Is Not in the Public Interest.

Although plaintiffs purport to speak for "consumers, investors, [and] the DRC" by asserting that "all interested parties would be better off" under a stay, Stay Mot. at 17, in actuality plaintiffs speak only for their financial interests. The public's interest strongly favors denial of a stay, as do the interests of investors and consumers like Amnesty International who will be harmed if the rule is not enforced without further delay.

In passing Section 1502, Congress determined that the Conflict Minerals Rule was necessary to advance the United States' foreign policy objectives. As Senator Durbin and other members of Congress recently told the SEC in urging the agency to enforce without delay all reporting requirements left in place by this Court, Section 1502 is crucial to addressing the violence that has "earned eastern Congo the ominous designation as the 'Rape Capital of the World.'" Letter from Sen. Durbin, et al., to SEC Chair Mary Jo White, Apr. 21, 2014, *available at* http://www.durbin.senate.gov/public/index.cfm/pressreleases?ID=24e3113c-a6d5-4859-9561-8b80a25e014f. Through Section 1502, Congress used public disclosure as a tool to reduce "the exploitation and trade of conflict minerals" from the DRC that are "helping to finance [extremely violent] conflict" in the eastern part of the

country and "contributing to an emergency humanitarian situation" there. Dodd-Frank Act, § 1502(a), *reprinted at* 15 U.S.C. § 78a note.

Yet more than three years have passed since Congress's deadline for the SEC to adopt the Conflict Minerals Rule, *see* Dodd-Frank Act, § 1502(b), *codified at* 15 U.S.C. § 78m(p)(1)(A), and companies are just now on the verge of making the first disclosures required by the statute. Where, as here, the "administration of [a] regulatory statute[] designed to promote the public interest" is at stake, the public interest factor in the stay inquiry "necessarily becomes crucial." *Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958). Here, the public has an interest in seeing that a valid statute is enforced. *Cf. Nken*, 556 U.S. at 436 (recognizing that "[t]here is always a public interest in prompt execution of [executive] removal orders"). And it has an interest in ensuring that the ongoing work of many companies and the DRC government to create effective mechanisms for sourcing transparently is not hampered by yet another delay in the mandatory rule. *See generally* Global Witness Amicus Br. (describing innovative efforts of American businesses to comply with the rule and the rule's role in leveling the playing field for companies already implementing conflict minerals programs). Here, plaintiffs' suggestion that the SEC hit the "pause button" (Stay Mot. at 17) to do yet another round of notice-and-comment rulemaking—even after this Court upheld the bulk of the rule against plaintiffs'

challenges—is a stall tactic designed to promote some corporate interests at the expense of Congress's command. The motion should be rejected as contrary to the public interest.

The interests of investors and consumers are also not served by a stay of the rule. For the reasons explained in Part I.C. above, investors and consumers would be harmed by a stay because it would deny them access to significant information about a company's due diligence procedures, sourcing practices, and the origin of minerals used in certain products, information that will remain available under the rule left in place by this Court. If a stay is issued, the burden would fall on non-governmental organizations to investigate independently how issuers source and manage the minerals they use in their products. Although such investigations are rigorous, organizations cannot do them for the vast majority of issuers due to cost and a lack of access to information that companies are in the best position to have or obtain.

In sum, a stay would thwart Congress's valid mandate for the Conflict Minerals Rule and keep the public, including investors and consumers, in the dark while delaying the benefits to the DRC of transparency and greater corporate accountability. The public interest and the interests of other parties in this proceeding weigh against issuance of a stay.

CONCLUSION

For the foregoing reasons, this Court should deny the motion to stay the Conflict Minerals Rule and the rule's June 2, 2014, reporting deadline.

May 9, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 9, 2014, I caused the foregoing to be filed with the Clerk of the Court through the Court's ECF system, which will serve notice of the filing on all filers registered in this case.

/s/ Julie A. Murray
Julie A. Murray