

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

OXFAM AMERICA, INC.,

Plaintiff,

v.

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Defendant.

Civil Action No. 14-cv-13648-DJC

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Local Rule 56.1, and this Court's order dated January 5, 2015, Oxfam America, Inc. ("Oxfam") moves for summary judgment on its request for an order compelling the Securities and Exchange Commission ("SEC") to adopt a final rule implementing Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, a key provision of the reform act requiring companies to disclose information critical to investors like Oxfam and others.

Congress required the SEC to adopt a final rule implementing Section 1504 of Dodd-Frank by April 17, 2011. The SEC has twice found itself in violation of that deadline: first when it failed to implement a final rule by April 2011 and Oxfam sought relief in this Court under Section 706(1) of the Administrative Procedure Act, *see Oxfam America v. SEC*, No. 1:12-cv-10878-DJC (D. Mass. 2012); and now that the U.S. District Court for the District of Columbia has vacated and remanded on narrow grounds the final rule the SEC did implement shortly after Oxfam moved for summary judgment in the 2012 action.

Section 706(1) of the APA entitles Oxfam to an order compelling the SEC to cure its violation of the congressional rulemaking deadline for the following reasons:

1. Under Section 706(1) of the APA, the “reviewing court shall compel agency action unlawfully withheld or unreasonably delayed.”
2. The vacatur and remand of the SEC’s promulgated rule reinstates the status quo ante before the rule took effect and therefore the SEC’s violation of the April 2011 rulemaking deadline.
3. The SEC’s failure to meet that deadline constitutes agency action “unlawfully withheld.” Section 706(1) of the APA and the weight of authority in this Circuit and elsewhere requires an order compelling the SEC to act.
4. The SEC’s prolonged failure to meet that deadline also presents an unequivocal case of agency action “unreasonably delayed,” similarly requiring an order compelling the SEC to act.
5. The SEC has no administrative authority to reorder the rulemaking priorities established by Congress. It does have ample experience and a developed record from the original rulemaking to promulgate a new rule promptly and efficiently.

Accordingly, the Court should grant summary judgment in favor of Oxfam and enter an order requiring that the SEC: 1) issue a proposed rule within 30 days of the issuance of summary judgment or on August 1, 2015, whichever comes first; 2) open a 45-day period for public notice and comment; and 3) promulgate a final rule implementing Section 1504 within 45 days after the end of said period, with the final rule promulgated no later than November 1, 2015. In support of this request, Oxfam relies on its Memorandum of Law, the Declaration

of Jonathan G. Kaufman and exhibits thereto, and the Declaration of Paul O'Brien, each of which is filed herewith.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), Oxfam requests oral argument on this Motion as it believes that oral argument may assist the Court in its consideration of this Motion.

Date: January 23, 2015

Respectfully submitted,

OXFAM AMERICA, INC.

By its attorneys,

/s/ Derek B. Domian

Richard J. Rosensweig (BBO #639457)

rrosensweig@goulstonstorrs.com

Derek B. Domian (BBO #660568)

ddomian@goulstonstorrs.com

Goulston & Storrs, P.C.

400 Atlantic Avenue

Boston, MA 02110-3333

T: (617) 482-1776

F: (617) 574-4112

Jonathan Kaufmann (admitted *pro hac vice*)

Richard L. Herz (admitted *pro hac vice*)

Michelle Harrison (admitted *pro hac vice*)

EarthRights International

1623 K Street, NW

Washington D.C. 20006

LOCAL RULE 7.1(a)(2) CERTIFICATE

I hereby certify pursuant to Local Rule 7.1(a)(2) that counsel for Oxfam and SEC conferred in good faith in an effort to narrow or resolve the issues raised by this motion.

/s/ Derek B. Domian

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and email and paper copies will be sent to those indicated as non-registered participants on the above date.

/s/ Derek B. Domian