

**ARGUED JANUARY 7, 2014 DECIDED APRIL 14, 2014**

**DOCKET NO. 13-5252**

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

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NATIONAL ASSOCIATION OF MANUFACTURERS, CHAMBER OF  
COMMERCE OF THE UNITED STATES OF AMERICA, BUSINESS  
ROUNDTABLE

*Appellants,*

v.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

*Appellee,*

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AMNESTY INTERNATIONAL USA; AMNESTY INTERNATIONAL LTD.,

*Intervenors for Appellee.*

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On Appeal from the United States District Court for the District of Columbia,  
Case No. 1:13-cv-00635, Judge Robert L. Wilkins

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**INDUSTRY COALITION AMICI STATEMENT IN SUPPORT OF  
APPELLANTS' EMERGENCY MOTION FOR STAY OF THE SEC'S  
CONFLICT MINERALS RULE**

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## **CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES**

The following information is provided pursuant to D.C. Circuit Rule 28(a)(1):

### **Parties and *Amici***

Except for the following, all parties, intervenors, and *amici* appearing before the district court and in this court are listed in the Appellants' Emergency Motion for Stay of the SEC's Conflict Minerals Rule (Doc. #1491452) – *amici* Foodservice Packaging Institute and North American Metal Packaging Alliance, Inc.

### **Rulings Under Review**

The underlying appeal challenged the final order in case 1:13-cv-00635, entered by Judge Robert L. Wilkins on July 23, 2013, denying Appellants' motion for summary judgment and granting Appellee's and Intervenor-Appellees' cross-motions for summary judgment. This court, on April 14, 2014, issued its decision on appeal and remanded the case to the district court (Doc. #1488184).

### **Related Cases**

Counsel is aware of no related cases currently pending in any other court, aside from the instant case which was remanded to the district court.

**RULE 26.1 CORPORATE DISCLOSURE STATEMENT**

*Amici curiae* American Coatings Association, Inc., American Chemistry Council, Can Manufacturers Institute, Consumer Specialty Products Association, Foodservice Packaging Institute, North American Metal Packaging Alliance, Inc., and The Society of the Plastics Industry, Inc. do not have any parent corporation and are not publicly traded entities. All *amici curiae* are represented by Eric G. Lasker, Hollingsworth LLP, and Eric P. Gotting, Keller & Heckman, LLP.

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## INTEREST OF AMICI

*Amici curiae* respectfully submit this statement in support of Appellants' Emergency Motion for Stay of the SEC's Conflict Minerals Rule, on behalf of themselves and their membership.<sup>1</sup> *Amici* American Coatings Association, American Chemistry Council, Can Manufacturers Institute, and The Society of the Plastics Industry previously filed a brief (Doc. #1457278) in support of Appellants in the underlying appeal, discussing how numerous markets will suffer arbitrary and capricious consequences from various decisions made by the U.S. Securities and Exchange Commission ("SEC") when drafting its Conflict Minerals Rule, 77 Fed. Reg. 56,274 (Sept. 12, 2012), codified at 17 C.F.R. § 240.13p-1.

Each of the members of the *amici curiae* coalition reiterates its support for efforts to end the humanitarian crisis in and around the Democratic Republic of the Congo and the intent of the legislation that authorized the SEC Rule. However, as a result of this court's remand on First Amendment grounds (Doc. #1488184), *amici* believe that the Conflict Minerals Rule should be stayed, including its June 2 filing deadline, until its proper scope and implementation are resolved.<sup>2</sup>

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<sup>1</sup> No entities other than the identified *amici curiae* have contributed to the funding of this statement, which was drafted by counsel for *amici* identified herein. All of the parties in this matter have consented to the filing of this statement.

<sup>2</sup> Under the Conflict Minerals Rule, any filings must be submitted on or before May 31, 2014. 77 Fed. Reg. at 56,274. However, given that May 31 falls on a weekend, the first reports are not due until June 2, 2014.

The following associations join this brief, all of whom have members who will be impacted by the Conflict Minerals Rule:

The American Coatings Association, Inc. (“ACA”) is a voluntary, nonprofit trade association representing some 300 manufacturers of paints, coatings, adhesives, sealants and caulks, raw materials suppliers to the industry, and product distributors. *See* ACA’s website, <http://www.paint.org>.

The American Chemistry Council (“ACC”) represents the leading companies engaged in the business of chemistry, which is a \$770 billion enterprise and a key element of the nation's economy. *See* ACC’s website, <http://www.americanchemistry.com>.

The Can Manufacturers Institute (“CMI”) is the national trade association of the metal can manufacturing industry and its suppliers in the United States. *See* CMI’s website, <http://www.cancentral.com>.

The Consumer Specialty Products Association (“CSPA”) is the premier trade association representing the interests of companies engaged in the manufacture, formulation, distribution and sale of consumer disinfectants, pest management products for home, garden and pets, cleaning products and polishes for use throughout the home and institutions, and aerosol products. *See* CSPA website, <http://www.cspa.org>.

The Foodservice Packaging Institute (“FPI”) is the trade association for the foodservice packaging industry in North America. FPI’s members include raw material and machinery suppliers, packaging converters, foodservice distributors and operators/retailers. *See* FPI website, <http://www.fpi.org>.

The North American Metal Packaging Alliance, Inc., (“NAMPA”) is a not-for-profit trade association committed to protecting health through the safety of metal packaging and metal packaged foods. NAMPA’s membership represents the food and beverage packaging industry. *See* NAMPA website, <http://www.metal-pack.org>.

The Society of the Plastics Industry, Inc. (“SPI”) is the trade association representing the third largest manufacturing industry in the United States. The U.S. plastics industry provides approximately \$380 billion in annual shipments around the world. *See* SPI’s website, <http://www.plasticsindustry.org>.

### **STATEMENT IN SUPPORT**

*Amici curiae* submit this statement in support of Appellants’ Emergency Motion For Stay of the SEC’s Conflict Minerals Rule (“Rule”) until all outstanding issues regarding the Rule’s proper scope and implementation are resolved. Specifically, the Motion for Stay, which was filed by Appellants National Association of Manufacturers, Chamber of Commerce of the United States of America, and Business Roundtable, requests that the entire Rule, or at least the

upcoming May 31 filing deadline, be stayed until all litigation regarding the Rule has been completed and the SEC clarifies what information must be included in any Form SDs and conflict minerals reports.

*Amici* fully support efforts to end the humanitarian crisis in and around the Democratic Republic of the Congo, as well as the underlying intent of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) and the implementing Rule. However, following the recent decision issued by this court in *Nat’l Ass’n of Mfrs., et al. v. S.E.C.*, No. 13-5252, 2014 WL 1408274 (D.C. Cir. April 14, 2014) (“*NAM*”), which held that compelling manufacturers to describe products as “not DRC conflict free” violates the First Amendment, there remains significant uncertainty going forward as to what manufacturers will ultimately be required to disclose and report.

*Amici* agree with Appellants that additional issues need to be considered, such as developing alternative disclosure requirements that offer less restrictive means to achieving the Dodd-Frank Act’s goals, and that the SEC’s recent guidance (*see* Keith F. Higgins, Statement on the Effect of the Recent Court of Appeals Decision on the Conflict Minerals Rule, Apr. 29, 2014) falls well short in that regard. Given that the SEC will not be able to resolve these issues before the filing deadline of June 2, *amici* believe that it makes more sense to proceed only after the SEC has clearly defined the reporting obligations.

It is imperative that this court stay the rule so that no unnecessary burdens or costs are imposed on industry. If *amici*'s members are subject to reporting requirements that are later found to be unwarranted by either the courts or the SEC, a large segment of the economy, spanning numerous manufacturing sectors, will be adversely impacted. By way of example, the chemical industry is a \$770 billion enterprise.<sup>3</sup> Similarly, the members of SPI, standing alone, generate approximately \$380 billion in annual shipments around the world and employ almost 1 million workers.<sup>4</sup> Collectively, *amici* manufacture countless intermediate and final products that are potentially subject to the Rule, including housewares, lubricants, coatings and sealants, medical devices, packaging, printing inks, footwear, adhesives, films, pipe, siding, flooring, personal clothing, draperies, insulation, durable fibers, pesticides, cleaning products, and automobile parts.

*Amici* understand that the SEC has invested a significant amount of time and effort into crafting a rule that fairly implements the Dodd-Frank Act. *Amici* believe, however, that it is in the best interests of all parties involved that any outstanding issues be finally resolved before the filing deadline passes and the regulated community incurs additional costs.

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<sup>3</sup> See ACC website at [www.americanchemistry.com/About](http://www.americanchemistry.com/About) (last visited on May 8, 2014).

<sup>4</sup> See SPI website at [www.plasticsindustry.org/aboutspi/?navItemNumber=1009](http://www.plasticsindustry.org/aboutspi/?navItemNumber=1009) (last visited on May 8, 2014).

**CONCLUSION**

Based on the foregoing, *amici curiae* urge this court to grant Appellants' Emergency Motion For Stay of the SEC's Conflict Minerals Rule.

Respectfully Submitted,

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Date: May 8, 2014

**CERTIFICATE OF SERVICE**

I hereby verify that on this 8th day of May 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

s/ Eric G. Lasker  
Eric G. Lasker