

Challenging the **Conflict Minerals Rule** – A Review of the Docket

Natl Assoc. of Manufacturers, et al v. SEC (Case No. 12-1422)

Date Filed: 10/19/2012

Last Updated: 12/3/2012

Background

On October 22, 2012, the United States Chamber of Commerce and the National Association of Manufacturers (Petitioners) filed an Amended Petition for Review with the US Court of Appeals, District of Columbia Circuit. The Petitioners requested that the new Conflict Minerals Rule be modified or set aside in whole or in part. Since then, the Business Roundtable has joined the Petitioners and the two Amnesty International entities have joined the Respondent in the challenge.

Participants

Petitioners	Respondents/Intervenors
National Association of Manufacturers	Securities and Exchange Commission (SEC)
United States Chamber of Commerce	Amnesty International USA
Business Roundtable	Amnesty International Limited

Key Proceedings

11/27/2012 [Clerk's Order filed considering motion to expedite case, setting briefing schedule.](#)

The US Court of Appeals, District of Columbia Circuit granted Petitioners' Motion to Expedite and the briefing schedule as agreed by the parties.

The Clerk ordered the following briefing schedule:

Petitioners' Opening Brief	January 16, 2013
Respondent's Brief	March 1, 2013
Briefs of Any Intervenors or Amici In Support of Respondents	March 8, 2013
Petitioners' Reply Brief	March 22, 2013

Deferred Appendix	March 26, 2013
Final Briefs	March 28, 2013

11/27/2012 [Clerk's Order filed granting motion for leave to intervene filed by Amnesty International USA and Amnesty International Limited.](#)
The US Court of Appeals, District of Columbia Circuit granted the motion for leave to intervene filed by Amnesty International.

11/21/2012 [Consent Unopposed Motion filed by Business Roundtable, United States Chamber of Commerce and National Association of Manufacturers to expedite case.](#)
In regards to the Motion to Expedite, to which the SEC consented, the Petitioners contend that "delay will cause Petitioners irreparable injury because implementation of the Rule will impose extraordinary costs upon them." The Petitioners hope that the expedited review schedule will "increase the possibility that the case can be decided before the end of 2013." A decision prior to the end of 2013 will allow companies to forgo filing a specialized disclosure report (if applicable) and avoid the second calendar year of compliance.

Also, the Petitioners argue that companies not subject to the Rule have a strong interest in prompt disposition of the case because they will also incur costs in conducting due diligence as they are a part of the global supply chains.

11/21/2012 [Statement of Issues Filed by Business Roundtable, United States Chamber of Commerce and National Association of Manufacturers.](#)
The Petitioners contend that the following issues are grounds for a Petition for Review:

1. Whether the [SEC's] economic analysis of Rule 13p-1 and Form SD is inadequate, in violation of 15 USC 78c(f), 15 USC 78w(a)(2) and 5 USC 603.
2. Whether the [SEC's] refusal to adopt a *de minimis* exception to Rule 13p-1 is erroneous, arbitrary and capricious, or an abuse of discretion.
3. Whether the [SEC's] interpretation of 15 USC 78m(p)(2)(B) as including non-manufacturers who "contract to manufacture" products is erroneous, arbitrary and capricious, or an abuse of discretion.
4. Whether the [SEC's] interpretation of "did originate" in 15 USC 78m(p)(1)(A) as "reason to believe...may have originated" is erroneous, arbitrary and capricious, or an abuse of discretion.

5. Whether the standard and requirements imposed by Rule 13p-1's "reasonable country of origin inquiry" are erroneous, arbitrary and capricious, or an abuse of discretion.
6. Whether the structure of the transition period established by the rule is erroneous, arbitrary and capricious, or an abuse of discretion.
7. Whether 15 USC 78m(p) compels speech in violation of the First Amendment to the US Constitution.
8. Whether the [SEC] otherwise acted in a manner that was arbitrary and capricious, an abuse of discretion, unlawful, or contrary to a constitutional right within the meaning of the Administrative Procedure Act, 5 USC 706, or other applicable law in adopting Rule 13p-1 and Form SD.

- 11/21/2012 [Docketing Statement Filed by Business Roundtable, United States Chamber of Commerce and National Association of Manufacturers.](#)
- The Petitioners filed a docketing statement giving a quick overview of the challenge, including which ruling is under challenge, and provided the basis of the petitioners' claim of standing. The Petitioners assert that they are three business associations and many of petitioners' members are reporting companies that manufacture products, thus subjecting them to the rule.
- 11/19/2012 [Modified Party Filer – Motion filed by Amnesty International USA and Amnesty International Limited for leave to intervene.](#)
- 10/22/2012 [Amended Petition for Review filed by Business Roundtable, United States Chamber of Commerce and National Association of Manufacturers.](#)
- 10/19/2012 [Petition for Review filed by United States Chamber of Commerce and National Association of Manufacturers of a decision by federal agency.](#)

Contact

Dynda A. Thomas
+1 216 479 8583
dynda.thomas@squiresanders.com

Andrew J. Renacci
+1 216 479 8501
andrew.renacci@squiresanders.com

David M. Spooner
+1 202 626 6612
david.spooner@squiresanders.com