
ORAL ARGUMENT NOT YET SCHEDULED

NO. 12-1422

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

NATIONAL ASSOCIATION OF MANUFACTURERS *et al.*,
Petitioners,

v.

U.S. SECURITIES AND EXCHANGE COMMISSION,
Respondent,

and

AMNESTY INTERNATIONAL OF THE USA, INC. and
AMNESTY INTERNATIONAL LIMITED,
Proposed Respondents-Intervenors.

On Petition for Review of a Final Rule
Issued by the U.S. Securities and Exchange Commission

**MOTION OF AMNESTY INTERNATIONAL OF THE USA, INC. AND
AMNESTY INTERNATIONAL LIMITED FOR LEAVE TO
INTERVENE AS RESPONDENTS**

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November 19, 2012

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CERTIFICATE AS TO PARTIES

The National Association of Manufacturers, the Chamber of Commerce of the United States, and the Business Roundtable are Petitioners in this case. The U.S. Securities and Exchange Commission is the Respondent. Amnesty International of the USA, Inc. and Amnesty International Limited are proposed Respondents-Intervenors. No amici have appeared in the case.

/s/ Julie A. Murray
Julie A. Murray

CORPORATE DISCLOSURE STATEMENT

Amnesty International of the USA, Inc. 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

INTRODUCTION

Pursuant to Federal Rule of Appellate Procedure 15(d), Amnesty International of the USA, Inc. (AIUSA) and Amnesty International Limited (collectively, Amnesty International) respectfully move to intervene in this proceeding for judicial review of a U.S. Securities and Exchange Commission (SEC) final rule known as the Conflict Minerals Rule, *see* SEC Release No. 34-67716 (Aug. 22, 2012); SEC, *Conflict Minerals*, 77 Fed. Reg. 56,274 (Sept. 12, 2012) (Conflict Minerals Rule), and the statutory provision requiring adoption of that rule, *see* Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), Pub. L. No. 111-203, § 1502, 124 Stat. 1376, 2213, codified at 15 U.S.C. § 78m(p). Both the Conflict Minerals Rule and its authorizing statute require certain companies to investigate and disclose whether their products contain minerals that help finance armed groups in the Democratic Republic of the Congo (DRC) or adjoining countries.

Amnesty International has contacted counsel for all parties to obtain their views on this motion. The SEC consents to Amnesty International's intervention, and Petitioners take no position on the motion for leave to intervene.

Amnesty International's motion for leave to intervene as a Respondent satisfies Federal Rule of Appellate Procedure 15(d)'s requirement that Amnesty

International demonstrate an interest and grounds for intervention.¹ Amnesty International participated in the underlying rulemaking. In addition, Amnesty International intends to rely on the information in disclosures required by the Conflict Minerals Rule to make more informed investment, purchasing, and other business decisions. The disclosures will also allow Amnesty International Limited to engage in new activities that support its core mission, whereas invalidation of the Conflict Minerals Rule would require Amnesty International Limited to divert resources from those activities to counteract the reduction in corporate transparency caused by the rule's invalidation. The interest and perspective of Amnesty International are also distinct from those of the SEC, a factor that favors Amnesty International's intervention. The Court should, therefore, grant Amnesty International's motion for leave to intervene in this case.

BACKGROUND

I. Amnesty International

Amnesty International is a worldwide voluntary membership organization and consists of national branches, international networks, affiliated groups, and international members. Ex. A, Declaration of Suzanne Nossel (Nossel Decl.) ¶ 2.

¹ Amnesty International's motion to intervene is timely under Federal Rule of Appellate Procedure 15(d), which requires intervention within thirty days of the filing of the petition for review.

Its mission is to conduct research and take action to prevent and end grave abuses of human rights. Ex. B, Declaration of Michael Bochenek (Bochenek Decl.) ¶ 2.

Amnesty International Limited and AIUSA are parts of Amnesty International. Bochenek Decl. ¶ 2; Nossel Decl. ¶ 1. Amnesty International Limited, a non-profit organization registered in England and Wales with a branch office in New York, funds and employs the research, campaigning, and advocacy staff of Amnesty International's International Secretariat. Bochenek Decl. ¶ 3. The International Secretariat is the coordinating body for Amnesty International's worldwide membership and national sections. *Id.* ¶ 2. It conducts in-depth research on human rights violations and their causes and consequences, and it makes recommendations to address those violations. *Id.* The International Secretariat works closely with Amnesty International's national sections, including AIUSA, the Amnesty International section in the United States. *Id.*; Nossel Decl. ¶ 1. AIUSA is the largest national section of Amnesty International with nearly 250,000 members. AIUSA, Who We Are, <http://www.amnestyusa.org/about-us/who-we-are> (last visited Nov. 18, 2012). Together, the International Secretariat and national sections such as AIUSA prepare and carry out campaigns, human rights education, and advocacy activities to address the human rights abuses identified through the International Secretariat's research. Bochenek Decl. ¶ 2.

II. Section 1502 and the Conflict Minerals Rule

For nearly two decades, the DRC has been in the grip of armed conflict that has caused the suffering of millions of men, women, and children.² Armed groups are responsible for widespread human rights abuses, including unlawful killings, rape, and other forms of sexual violence.³ An important source of funding for these groups is the minerals trade, which supplies tin, tantalum, tungsten, and gold that end up in popular consumer products. *See* Dodd-Frank Act, § 1502(a), codified at 15 U.S.C. § 78a, note; Conflict Minerals Rule, 77 Fed. Reg. at 56,275-56,276 & n.6.

In 2010, Congress acted to lessen the use of conflict minerals fueling violence in the DRC, with the goal of “reduc[ing] funding for the armed groups contributing to the conflict” and “put[ting] pressure on such groups to end the conflict.” Conflict Minerals Rule, 77 Fed. Reg. at 56,276. Congress did so by passing Section 1502 of the Dodd-Frank Act, which amended U.S. securities law to require certain companies that file reports with the SEC to investigate and disclose publicly whether their products rely on conflict minerals from the DRC or adjoining countries and whether the trade in those minerals helps finance armed

² *See* Amnesty Int’l, “*If You Resist, We’ll Shoot You*”: *The Democratic Republic of the Congo and the Case for an Effective Arms Trade Treaty* 7 (2012), available at http://www.amnestyusa.org/sites/default/files/12-06-08_arms_to_drc_-_final.pdf.

³ *See id.*

groups contributing to the conflict and humanitarian crisis. Dodd-Frank Act, § 1502(b), codified at 15 U.S.C. § 78m(p)(1). Section 1502 increases corporate transparency and provides American consumers and investors with useful information to guide their decisions. *See* Conflict Minerals Rule, 77 Fed. Reg. at 56,276 (citing 156 Cong. Rec. S3976 (daily ed. May 19, 2010) (statement of Sen. Feingold)).

Section 1502 directs the SEC to promulgate implementing regulations for the law's investigation and disclosure requirements, *see* Dodd-Frank Act, § 1502(b), codified at 15 U.S.C. § 78m(p)(1)(A), which the SEC did in August 2012 by adopting the final Conflict Minerals Rule, *see* SEC Release No. 34-67716. The Conflict Minerals Rule applies to companies that file reports with the SEC pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78m(a), 78o(d). *See* Conflict Minerals Rule, 77 Fed. Reg. at 56,287. A reporting company that manufactures or contracts to manufacture a product that necessarily contains conflict minerals must conduct a "reasonable country of origin" inquiry designed to determine whether the minerals originated in the DRC or an adjoining country (or, alternatively, are from recycled or scrap sources). *Id.* at 56,283, 56,310. If, after that inquiry, a reporting company concludes that the conflict minerals in its product *are not* from the DRC or an adjoining country or that they *are* from recycled or scrap sources, the company must file with the SEC a

specialized disclosure form disclosing and describing the company's reasonable country of origin inquiry. *Id.* at 56,283, 56,313. The company must also disclose the same information on its public website. *Id.* at 56,315.

In contrast, if a reporting company knows or has reason to believe that the conflict minerals in its product may have originated in the DRC or an adjoining country and that the conflict minerals are not or may not be from recycled or scrap sources, then the Conflict Minerals Rule requires the company to conduct a due diligence inquiry regarding the source and chain of custody of the conflict minerals. *Id.* at 56,283, 56,313. Unless the company determines as part of its due diligence inquiry that the conflict minerals are not from the DRC or an adjoining country or that they come from scrap or recycled sources, it must file a "Conflict Minerals Report" as an exhibit to the specialized disclosure form filed with the SEC. *Id.* at 56,283, 56,320. The Conflict Minerals Report must describe, among other things, the company's due diligence measures. *Id.* at 56,283, 56,320. Moreover, if a company's product is found not to be "DRC conflict free" or to be "DRC conflict undeterminable"—terms defined by the rule in reliance on Section 1502—the company must provide additional information in its Conflict Minerals Report, including a description of the product. *Id.* at 56,283, 56,321-56,323. A company that files a Conflict Minerals Report with the SEC must make the report available to the public on the company's website. *Id.* at 56,310.

STATEMENT OF INTEREST AND GROUNDS FOR INTERVENTION

Federal Rule of Appellate Procedure 15(d) governs intervention in a petition for review and requires “a concise statement of the interest of the moving party and the grounds for intervention.” Fed. R. App. P. 15(d); *see Synovus Fin. Corp. v. Bd. of Governors of Fed. Reserve Sys.*, 952 F.2d 426, 433 (D.C. Cir. 1991). Amnesty International’s interest in the proceeding is evidenced by its participation in the SEC rulemaking and by its intent to rely on information required to be disclosed under the rule to make investment, consumer, and other organizational decisions. Amnesty International’s interest will be impaired if either Section 1502 or the Conflict Minerals Rule is invalidated. Moreover, Amnesty International’s interest and perspective are distinct from those of the SEC and thus favor intervention.

I. Amnesty International Participated in the Rulemaking and Will Bring Distinct Interests and Perspective to the Litigation.

Amnesty International participated in the rulemaking that led to the Conflict Minerals Rule. AIUSA and the International Secretariat submitted comments during the rulemaking to support the full and rapid implementation of Section 1502 and the SEC’s adoption of clear standards for companies required to conduct due diligence efforts under the rule. *See* Bochenek Decl. ¶¶ 6-7; Nossel Decl. ¶ 5. AIUSA also met with an SEC Commissioner and urged its members to write to the SEC in support of the Conflict Minerals Rule. Nossel Decl. ¶ 5. Amnesty

International's active participation in the rulemaking strongly favors its intervention.

Amnesty International also has an interest and perspective distinct from those of the SEC. The SEC is charged with protecting investors, maintaining markets, and facilitating capital formation, but Amnesty International's interests in this case go beyond those of an investor. Amnesty International has an interest as well in the human rights-related goals of the Conflict Minerals Rule, and it views Section 1502 as a "key first step toward disrupting the supply chains that connect minerals used in consumer products, such as cell phones, to the violence, insecurity, and abuses that have claimed millions of lives in the eastern part of the [DRC]." Nossel Decl. ¶ 4. Moreover, Amnesty International plans to rely on information from the disclosures required by the Conflict Minerals Rule not just to make investment decisions, *id.* ¶¶ 13-16, but also to make purchasing and fundraising decisions and to engage in new activities that are central to its mission and that will be impaired if the rule is invalidated, *id.* ¶¶ 18-19; Bochenek Decl. ¶¶ 8-9, 20-21.

As a Respondent-Intervenor, Amnesty International will bring expertise in the areas of human rights, extractive industries, and corporate transparency. It has deep knowledge of the ongoing conflict and humanitarian crisis in the DRC. Bochenek Decl. ¶ 12. For example, the International Secretariat has published

numerous reports on the region, including one that documents the scale of crimes under international law committed by Congolese security forces and armed groups.

Id. In addition, Amnesty International has expertise on the incidence of human rights abuses related to extractive industries, and it has long called for disclosures and due diligence processes of the kind required by the Conflict Minerals Rule. *Id.*

¶¶ 16, 18-19.

II. Amnesty International Will Be Injured If Section 1502 and the Conflict Minerals Rule Are Invalidated.

Amnesty International has a strong interest at stake in the enforcement of Section 1502 and the Conflict Minerals Rule. If the rule and the statute underlying it are invalidated, Amnesty International will suffer a concrete injury to its investment, consumer, and other organizational interests. It can, therefore, demonstrate an interest that warrants intervention under Federal Rule of Appellate Procedure 15(d).⁴

⁴ The Court need not engage in a separate inquiry to determine whether Amnesty International has standing to intervene as a respondent. *See, e.g., McConnell v. FEC*, 540 U.S. 93, 233 (2003), *overruled on other grounds by Citizens United v. FEC*, 558 U.S. 310 (2010). Nonetheless, the attached declarations make clear that invalidation of the Conflict Minerals Rule would inflict a particularized injury on Amnesty International sufficient to confer standing. *See, e.g., FEC v. Akins*, 524 U.S. 11, 21 (1998) (informational standing); *Am. Soc. for Prevention of Cruelty to Animals v. Feld Entm't, Inc.*, 659 F.3d 13, 25 (D.C. Cir. 2011) (*Havens* standing).

A. AIUSA Has Investment and Business Interests at Stake in the Enforcement of the Conflict Minerals Rule.

1. AIUSA invests a portion of its assets in securities, including common stock, and it is committed to an investment philosophy that respects and enhances its efforts on behalf of human rights. Nossel Decl. ¶¶ 6-8, 11. Section 1502 and the Conflict Minerals Rule provide investors, including AIUSA, with information about companies' reliance on conflict minerals from the DRC or adjoining countries and about whether those minerals help finance armed groups operating in the region. *See* Conflict Minerals Rule, 77 Fed. Reg. at 56,276. AIUSA will rely on this information to make more informed and socially responsible investment decisions and to engage more effectively in shareholder advocacy. Nossel Decl. ¶ 13.

Specifically, AIUSA believes that companies that uphold human rights principles in their business operations may be good investments for its assets. *Id.* ¶ 6. It, therefore, maintains an Investment Policy Statement that sets criteria for the management of AIUSA's financial assets, including reserve accounts. *Id.* ¶ 9. AIUSA's Policy Statement attempts to screen out investments in companies with operations that may perpetrate or be complicit in grave human rights abuses. *Id.* Investment managers for AIUSA's reserve accounts use the Policy Statement to guide their investments with respect to AIUSA's portfolios. *Id.*

In addition, AIUSA maintains securities that it relies on to engage in

shareholder advocacy efforts. *Id.* ¶ 11. This investment portfolio, which is not governed by AIUSA's Policy Statement, includes stock in numerous companies, such as Wal-Mart Stores Inc., Freeport McMoran Copper & Gold, Coca-Cola Company, Dow Chemical Company, and Yahoo Inc. *Id.* AIUSA determines annually whether to sell existing shares of these stocks or whether to buy stocks from other companies. *Id.* AIUSA is an active shareholder: It files shareholder resolutions, uses its right as a shareholder to attend annual shareholder meetings, and routinely votes its shares in favor of shareholder resolutions that support human rights. *Id.* ¶ 12.

AIUSA intends to review the disclosures made in compliance with the Conflict Minerals Rule to determine whether and to what extent the companies in which it invests manufacture or contract to manufacture products that necessarily rely on conflict minerals from the DRC or an adjoining country and whether those products help finance armed groups. *Id.* ¶ 14. AIUSA will also rely on the disclosures to assess the extent to which companies have conducted appropriate due diligence investigations with respect to conflict minerals. *Id.*

AIUSA intends to use the disclosed information in several ways. First, AIUSA and its investment managers will use the disclosure information to apply AIUSA's existing policy of screening out reserve account investments in companies with operations that may perpetrate or be complicit in grave human

rights abuses. *Id.* ¶ 15. AIUSA also intends to incorporate more specific criteria into its Investment Policy based on information that will become available from disclosures mandated by the Conflict Minerals Rule. *Id.* As a result of the disclosures, AIUSA and its investment managers will be better able to apply AIUSA's socially responsible priorities to the investment of AIUSA's reserve accounts. *Id.*

Second, AIUSA intends to use the disclosures to inform its shareholder advocacy and corporate governance activities. *Id.* ¶ 16. The disclosures will provide AIUSA with relevant information that AIUSA will use to engage companies in dialogue and to vote on shareholder resolutions. *Id.* The disclosures will also facilitate AIUSA's ability to file shareholder resolutions on the subject of conflict minerals if such resolutions are warranted. *Id.*

If Section 1502 or the Conflict Minerals Rule were invalidated, AIUSA would not have access to the disclosures now required by law, which would harm AIUSA's interest in making financially sound and socially responsible investments and its interest in participating as a shareholder. *Id.* ¶ 17.

2. AIUSA also has a separate business interest in the enforcement of the Conflict Minerals Rule. As a human rights organization, AIUSA has a policy of screening corporate donations to exclude gifts from companies that are complicit in human rights abuses or that pose other risks to AIUSA's reputation. *Id.* ¶ 18.

Information indicating that a company relies on conflict minerals from the DRC or adjoining countries and that such reliance may fund armed groups would be relevant to AIUSA's corporate screening policy. AIUSA has in the past tried to determine whether potential corporate donors' products relied on conflict minerals originating in the DRC. *Id.* But the information provided in the disclosures under the Conflict Minerals Rule will be more reliable and robust than information from current sources. *Id.*

AIUSA intends to use this new information to make decisions regarding whether to accept donations from companies that manufacture products that contain conflict minerals originating in the DRC and that may provide support for armed groups in the region. *Id.* If Section 1502 and the Conflict Minerals Rule were invalidated, AIUSA would lose access to this information, lessening its ability to make informed decisions regarding potential reputational risks attendant to AIUSA's acceptance of certain corporate donations. *Id.* ¶ 19.

B. Amnesty International Limited Has Consumer and Organizational Interests in the Enforcement of the Conflict Minerals Rule.

1. Through the decisions of the International Secretariat, Amnesty International Limited has a consumer interest in the disclosures required by Section 1502 and the Conflict Minerals Rule. Bochenek Decl. ¶ 8. Specifically, the International Secretariat's procurement policies require ethical and due diligence

checks to ensure that suppliers comply with human rights, labor, and environmental standards and that the suppliers take reasonable steps to ensure that those with whom they have a business relationship do the same. *Id.* To comply with the International Secretariat's human rights standards, suppliers must take reasonable steps to ensure that they do not profit directly or indirectly from child labor or that of other vulnerable groups, or from bonded labor, indentured labor, or any other form of servitude; that any goods that they produce, trade, or deal in are not and have not been implicated in human rights abuses by military, security, or police forces or other state agents or by non-state actors; and that they do not cause or contribute to the commission of serious human rights abuses, including by non-state actors. *Id.*

The International Secretariat will use information in the disclosures to determine whether companies and their products rely on conflict minerals from the DRC and adjoining countries and the extent to which such reliance may fund armed groups in the DRC responsible for human rights abuses. *Id.* ¶ 9. It will rely on that information when choosing between products that it intends to purchase or lease, including computers, landline and mobile telephones, cameras and video equipment, and other electronic devices. *Id.*

Without the disclosures mandated by Section 1502 and the Conflict Minerals Rule, the International Secretariat would be unable in all but the most exceptional

circumstances to determine which companies and products rely on conflict minerals from the DRC and adjoining countries and the extent to which that reliance funds armed groups in the DRC responsible for human rights abuses. *Id.*

¶ 10. Accordingly, invalidation of the Conflict Minerals Rule and Section 1502 would impair Amnesty International Limited's ability to make informed purchasing decisions that are consistent with its socially responsible interests. *Id.*

2. Amnesty International Limited also has an interest in the Conflict Minerals Rule because the rule will facilitate the International Secretariat's work on new public education and advocacy activities that further the organization's core mission, and invalidation of the rule will frustrate the organization's mission while necessitating a redirection of resources to counteract the rule's invalidation. Specifically, in recent years, the International Secretariat has invested a substantial amount of staff time and other financial resources in activities related to human rights abuses in the DRC; human rights abuses in the context of extractive industries, including mining; and corporate accountability. Bochenek Decl. ¶¶ 12-13, 16-19. Using the new disclosures that the Conflict Minerals Rule requires, the International Secretariat intends to engage in new public education and advocacy activities that bring greater attention to the relationship between conflict minerals and human rights abuses in the DRC. *Id.* ¶ 20. These activities will further Amnesty International's core mission of conducting research and taking action to

prevent and end grave abuses of all human rights. *Id.* ¶¶ 2, 20.

Invalidation of the Conflict Minerals Rule would frustrate Amnesty International's mission. The International Secretariat would not be able to engage in the public education and advocacy activities that it plans to undertake using information obtained from the required disclosures. *Id.* ¶ 21. It would, therefore, be more difficult for the International Secretariat to fulfill its mission, that is, do research and take action to end human rights abuses. Instead, the International Secretariat would redirect substantial staff time and other financial resources to determine how and to what extent it could investigate and report on cases in which the exploitation and trade of conflict minerals from the DRC helps to finance conflict in eastern DRC. *Id.*

CONCLUSION

For the foregoing reasons, Amnesty's motion for leave to intervene on behalf of the SEC should be granted.

November 19, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 19, 2012, 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