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Vice President

International Economic Affairs

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Dr. Michael S. Piowar
Acting Chairman
U.S. Securities and Exchange Commission
100 F Street NW
Washington, DC 20549

Dear Acting Chairman Piowar:

The National Association of Manufacturers (NAM) appreciates the opportunity to provide comments in response to your January 31 statement on the Securities and Exchange Commission (SEC) Conflict Minerals Rule (“the Rule”, 77 Fed. Reg. 56273), in which you encouraged interested parties to submit detailed comments.

Manufacturing in the United States supports more than 17 million jobs, and U.S. manufacturing is producing more today than ever before, reaching a record \$2.17 trillion in value-added output in 2015. It is the engine that drives the U.S. economy by providing good-paying and high-skilled jobs, opportunity and prosperity. Manufacturing has the biggest multiplier effect of any industry and manufacturers in the United States perform more than three-quarters of all private-sector R&D in the country – driving more innovation than any other sector.

While some NAM members include larger manufacturers that are issuers under the SEC rules, more than 90 percent of NAM members are small- and medium-sized manufacturers. A large number of NAM members of all sizes and in all sectors of the manufacturing economy have been negatively burdened by the Rule. While the SEC’s partial suspension of the Rule, which followed the April 2014 decision of the U.S. Court of Appeals for the District of Columbia Circuit in *NAM v. SEC* that found that Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) violated First Amendment rights, was a step in the right direction, it did not go far enough to alleviate the burden faced by manufacturers.¹ Therefore, the NAM strongly urges the SEC to consider implementing a full suspension of the Rule.

High Cost of Compliance for Manufacturers

The Rule places highly costly, burdensome and impracticable requirements on issuers to report on the presence and sourcing of tantalum, tin, gold and tungsten (3TG) that may or may not come from the Democratic Republic of the Congo (DRC) or an adjoining country. In developing the Rule, the SEC dismissed less costly regulatory alternatives and other options to reduce

¹ National Ass’n of Mfrs. v. SEC, 748 F.3d 359 (D.C. Cir. 2014) ([https://www.cadc.uscourts.gov/internet/opinions.nsf/D3B5DAF947A03F2785257CBA0053AEF8/\\$file/13-5252-1488184.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/D3B5DAF947A03F2785257CBA0053AEF8/$file/13-5252-1488184.pdf)), aff’d on reh’g, 800 F.3d 518 (2015).

burdens on issuers, and small- and medium-sized manufacturers and other businesses that may be suppliers to issuers. The United States and foreign governments have also failed to put in place the necessary infrastructure to trace the origin of minerals, making it nearly impossible for companies to know if their products contain conflict minerals.

Continued application of the Rule, despite the First Amendment failure of the underlying statute as found in *NAM v. SEC* and the ambiguity in the SEC's guidance and partial suspension of the Rule, continues to impose substantial cost burdens on manufacturers in the United States, particularly the thousands of small- and medium-sized manufacturers that supply large publicly traded companies and are asked by those issuers to conduct due diligence required by the Rule.

The high costs of complying with the Rule stem from the breadth of the use of 3TG minerals throughout the manufacturing process and the depth, complexity and constantly evolving nature of the global operations of manufacturers in the United States. Many manufacturers have thousands of multi-tier suppliers for their products and these sourcing arrangements are not static but dynamic.

One large NAM member company reports that non-recurring (i.e., start-up) implementation costs totaled approximately \$10 million, recurring compliance costs total as much as \$2 million each year, and ongoing compliance efforts require as many as 4.5 full-time equivalent (FTE) employees. For other NAM member companies, non-recurring costs, recurring costs and FTEs depend on the size of the company and the extent of its global operations.

For small- and medium-sized businesses, the burdens are oftentimes vast as they receive information requests from multiple publicly traded companies to which they provide inputs. The high costs of complying with the Rule divert resources from the core business priorities of NAM member companies, undermining the competitiveness of manufacturing in the United States.

Impracticability of the Rule

Despite the massive effort put in by NAM companies to comply fully with the Rule, the effort has proved largely futile.

Many manufacturers are forced to rely almost entirely on the due diligence of their suppliers for sourcing information, given that these minerals oftentimes represent only a small part of a final product that is not directly sourced by the issuing company. Issuers, therefore, have limited or no influence on suppliers, particularly those that are farther down the supply chain. Many of these suppliers are smaller, privately held companies that have limited resources and are themselves remote from the sourcing of the input metals. As a result, the disclosure mandated by Section 1502 of the Dodd-Frank Act has failed to obtain the desired results.

Furthermore, NAM member companies report that customers bar them from supplying products that include conflict minerals that are sourced from the DRC or adjoining countries, irrespective of whether or not the minerals are mined legitimately. In such cases, these practices create an effective embargo² on legitimately mined minerals from these countries.

² See, e.g., Testimony of Rick Goss, Senior Vice President of Environment and Sustainability, Information Technology Industry Council, before the Subcommittee on Monetary Policy and Trade, Committee on Financial Services, U.S. House of Representatives (May 21, 2013); "How a Well-intentioned Law Left Congolese Miners Jobless," Washington Post (Nov. 30, 2014); and "How Dodd-Frank is Failing Congo," Foreign Policy (Feb. 2, 2015).

NAM Views on 2014 Partial Stay and Guidance

On May 2, 2014, the SEC issued a partial stay of the portion of the rule that requires issuers to disclose whether any of their products have "not been found to be 'DRC conflict free,'" but denied the NAM's request that the entire rule be stayed as it continues to require burdensome and costly requirements on issuers and, effectively, their suppliers.³ Additionally, on April 29, 2014, Keith F. Higgins, then-Director of the SEC Division of Corporation Finance, issued a statement in which he declared that, pending further action, an independent private sector audit (IPSA) "will not be required unless a company voluntarily elects to describe a product as 'DRC conflict free' in its Conflict Minerals Report."⁴

Most NAM companies do not currently obtain IPSAs. For one large NAM member company, it is estimated that the non-recurring costs to obtain a third-party audit would be approximately \$375,000 and that annual recurring costs would be \$250,000. The company estimates that such an audit would take an estimated four to six weeks to complete.

If the IPSA requirement were reinstated, NAM member companies would likely need to add additional FTEs and make additional costly enhancements to their conflict minerals due diligence systems.

Most importantly, a third-party audit requirement to verify statements about the source of 3TG minerals would only create additional costs and burdens, when, in fact, the legal basis for requiring those statements has been declared unconstitutional. Any work that the SEC might require of regulated entities in support of an unconstitutional mandate would be contrary to the court's rejection of the mandate.

For these reasons, the NAM seeks an indefinite elimination of the requirement for the IPSA requirement if the entire Rule is not suspended.

Conclusion

On behalf of our 14,000 member companies, the NAM supports repeal of Section 1502 of the Dodd-Frank Act and the SEC's Conflict Mineral Rule.

We also believe it is unreasonable for companies to continue to spend substantial resources implementing the Rule when its central feature has been invalidated on constitutional grounds. Therefore, the NAM urges the SEC to suspend the Rule fully.

Sincerely,

Linda Dempsey

³ *In re* Exchange Act Rule 13p-1 and Form SD, Release No. 72079 (May 2, 2014) (<https://www.sec.gov/rules/other/2014/34-72079.pdf>).

⁴ SEC Staff Statement on the Effect of the Recent Court of Appeals Decision on the Conflict Minerals Rule (Apr. 29, 2014) (<https://www.sec.gov/News/PublicStmnt/Detail/PublicStmnt/1370541681994>).