

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72079 / May 2, 2014

File No. S7-40-10

In the Matter of Exchange Act Rule 13p-1
and Form SD

ORDER ISSUING STAY

On April 14, 2014, the United States Court of Appeals for the District of Columbia Circuit issued a decision in National Association of Manufacturers, et al. v. SEC, et al., No. 13-5252 (D.C. Cir. April 14, 2014). That case involved a challenge to Exchange Act Rule 13p-1 and Form SD.¹ The rule and form were adopted pursuant to Section 13(p) of the Securities Exchange Act of 1934, which was added by Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.² The Court of Appeals rejected all of the challenges to the rule based on the Administrative Procedure Act and the Exchange Act. The Court of Appeals, however, concluded that Section 13(p) and Rule 13p-1 “violate the First Amendment to the extent the statute and rule require regulated entities to report to the Commission and to state on their website that any of their products have ‘not been found to be “DRC conflict free.””³ In so concluding, the Court of Appeals specifically noted that there was no “First Amendment objection to any other aspect of the conflict minerals report or required disclosures.”⁴ In an order issued concurrently with the decision, the Court of Appeals withheld the issuance of its mandate until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc. As a result, the earliest date on which the Court of Appeals’s mandate is likely to issue is June 5, 2014. Under Rule 13p-1, the first reports are due to be filed on June 2, 2014.

Section 705 of the Administrative Procedure Act provides that an agency may postpone the effective date of an action taken by it pending judicial review when it finds that “justice so requires.” 5 U.S.C. 705. In light of the Court of Appeals’s decision, the Commission finds that it is consistent with what justice requires to stay the effective date for compliance with those portions of Rule 13p-1 and Form SD that would require the

¹ Conflict Minerals, 77 Fed. Reg. 56,274 (Sept. 12, 2012) (codified at 17 C.F.R. §§ 240, 249b).

² PL 111-203, 124 Stat. 1376, 2213 (2010).

³ Slip. Op. at 23.

⁴ Slip. Op. at 17 n.8.

statements by issuers that the Court of Appeals held would violate the First Amendment. Among other things, a stay of those portions of the rule avoids the risk of First Amendment harm pending further proceedings. Moreover, limiting the stay to those portions of the rule requiring the disclosures that the Court of Appeals held would impinge on issuers' First Amendment rights furthers the public's interest in having issuers comply with the remainder of the rule, which was mandated by Congress in Section 1502 and upheld by the Court of Appeals.

Accordingly, it is ORDERED, pursuant to Section 705 of the Administrative Procedure Act, that the effective date for compliance with those portions of Rule 13p-1 and Form SD subject to the Court of Appeals's constitutional holding are hereby stayed pending the completion of judicial review, at which point the stay will terminate. For more detailed guidance regarding compliance, issuers should refer to the statement issued by the staff on April 29, 2014, and any further guidance subsequently provided.⁵

By the Commission.

Kevin M. O'Neill
Deputy Secretary

⁵ On April 30, 2014, the National Association of Manufacturers, the Chamber of Commerce, and Business Roundtable filed a motion requesting that the Commission stay Rule 13p-1 in its entirety. In accordance with the above order, the motion is denied.