Staff Summaries of 2012 Rule Reviews

On June 17, 2022, the Commission published in the Federal Register a list of rules to be reviewed pursuant to section 610 of the Regulatory Flexibility Act ("Rule Review List"). The list included three rules adopted by the Commission in 2012 (see list below). The list was published to provide the public with notice that these rules were scheduled for review by the agency and to invite public comment on whether the rules should be continued without change, or should be amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of small entities. The staff of the Commission reviewed the comments received and has now completed reviews of the rules identified in the list of rules to be reviewed. If, based on a review, it is anticipated that the agency would take further action, a forthcoming Regulatory Flexibility Act agenda will so indicate.

The following are brief summaries of the reviews completed:

- Purchase of Certain Debt Securities by Business and Industrial Development Companies Relying on an Investment Company Act Exemption - The staff conducted a review concerning the impact on small entities of Investment Company Act Rule 6a-5, adopted in 2012. *See*, Release No. IC-30268 (Nov. 19, 2012), available at https://www.federalregister.gov/documents/2012/11/23/2012-28456/purchase-of-certain-debt-securities-by-business-and-industrial-development-companies-relying-on-an. Section 6(a)(5)(A)(iv) of the Investment Company Act was amended in 2010 to remove the reference to credit ratings in section 6(a)(5)(A)(iv) and to replace it instead with a reference to a standard of credit-worthiness to be adopted by the Commission. Accordingly, the Commission adopted rule 6a-5 to establish a credit-worthiness standard to replace the credit rating reference eliminated by the amendments to section 6(a)(5)(A)(iv). Rule 6a-5 permits business and industrial development companies ("BIDCOs") to satisfy the requirements for credit-worthiness of certain debt securities under what is now section 6(a)(4)(A)(iv)(I) if the board of directors or members of the company (or its or their delegate) determines, at the time of purchase, that: 1) the debt security is subject to no greater than moderate credit risk; 2) and the debt security is sufficiently liquid such that it can be sold at or near its carrying value within a reasonably short period of time. After considering the statutory review factors, staff does not believe that the rule amendments would need to change to minimize any significant economic impact of the rule upon a substantial number of small entities. Staff does not believe that the rule overlaps with other federal or state rules or that the rule is complex, and no aspect of the rule was identified during the RFA analysis as presenting a unique burden or cost to small entities. The Commission did not receive any comments from the public in response to the request for comments in the 2022 Rule Review List with respect to the RFA analysis of the rule.

- Conflict Minerals - The staff conducted a review concerning the impact on small entities of Rule 13p-1 under the Securities Exchange Act of 1934, which the Commission adopted in 2012. *See*, Release No. 34-67716 (Aug. 22, 2012), available at https://www.federalregister.gov/documents/2012/09/12/2012-21153/conflict-minerals. The Commission adopted Rule 13p-1 to implement the requirements of Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which added Section 13(p) to the Exchange Act. Rule 13p-1 requires certain issuers with conflict minerals that are necessary to the functionality or production of a product manufactured or contracted to be manufactured by that issuer to disclose annually the information required by Form SD. On October 19, 2012, a petition was filed challenging the rule under the Administrative Procedure Act, Exchange Act, and First Amendment. On April 3, 2017, the U.S. District Court for the District of Columbia set aside the rule only to the extent that it requires regulated entities to report to the Commission and state on their websites that any of their products "have not been found to be 'DRC conflict free.'" In all other respects, the court denied summary judgment to the plaintiffs and remanded to the Commission. The staff is not aware of any overlap or duplication of the rule with other federal rules, or with state and local government rules, and believes that the rule should be continued. The Commission did not receive any comments from the public in response to the request for comments in the 2022 Rule Review List with respect to the RFA analysis of the rule. The staff is considering recommendations for the Commission on a potential rulemaking in response to the court's remand of the case to the Commission and will consider the impact on small entities as part of that process.

- Listing Standards for Compensation Committees - The staff conducted a review concerning the impact on small entities of 2012 rule amendments implementing the requirements of Section 10C of the Securities Exchange Act of 1934, which was added by Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. *See*, Release No. 33-9330 (Jun. 20, 2012), available at https://www.federalregister.gov/documents/2012/06/27/2012-15408/listing-standards-for-compensation-committees. Section 10C requires the Commission to adopt rules directing the national securities exchanges and national securities associations to prohibit the listing of any equity security of an issuer, with certain exceptions, that is not in compliance with Section 10C's compensation committee and compensation adviser requirements. The rule amendments were designed to implement the statutory requirements of Section 10C by directing the exchanges and associations to establish listing standards that, among other things, require each member of a listed issuer's compensation committee to be a member of the board of directors and to be "independent," as defined in the listing standards adopted in accordance with the rule. The Commission exempted smaller reporting companies from these requirements. The amendments additionally require the disclosure, including from smaller reporting companies, of whether the issuer's compensation committee retained or obtained the advice of a compensation consultant; whether the work of the compensation consultant has raised any conflict of interest; and if so, the nature of the conflict and how the conflict

is being addressed. After considering the statutory review factors, including a review of public comments submitted in response to the request for comments in the 2012 Rule Review List, the staff does not believe that the amendments would need to change to minimize any significant economic impact of the amendments upon a substantial number of small entities. The exemption in the listing standard requirements for smaller reporting companies continues to be appropriate in view of (i) the generally less complex executive compensation arrangements of smaller reporting companies; (ii) the recently-expanded definition of smaller reporting companies, and (iii) the benefits of disclosure of compensation consultants' conflicts of interest to investors continues to justify the disclosure requirements, including for issuers that meet the definition of smaller reporting company. The staff does not believe that the amendments overlap with other federal or state rules or that the amendments are complex, and no aspect of the amendments was identified as presenting a unique burden or cost to small entities.