

**MEMO# 27308**

June 17, 2013

## **Supplemental Filing In Lawsuit Challenging Rule 4.5 Amendments**

[27308]

June 17, 2013

TO: ACCOUNTING/TREASURERS COMMITTEE No. 18-13  
BOARD OF GOVERNORS No. 9-13  
CLOSED-END INVESTMENT COMPANY MEMBERS No. 52-13  
COMPLIANCE MEMBERS No. 27-13  
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 48-13  
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 26-13  
ETF ADVISORY COMMITTEE No. 27-13  
FIXED-INCOME ADVISORY COMMITTEE No. 11-13  
ICI GLOBAL MEMBERS  
INVESTMENT ADVISER MEMBERS No. 40-13  
INVESTMENT COMPANY DIRECTORS No. 11-13  
OPERATIONS MEMBERS No. 13-13  
SEC RULES MEMBERS No. 57-13  
SMALL FUNDS MEMBERS No. 36-13  
TRANSFER AGENT ADVISORY COMMITTEE No. 44-13  
UNIT INVESTMENT TRUST MEMBERS No. 14-13  
VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 13-13 RE: SUPPLEMENTAL  
FILING IN LAWSUIT CHALLENGING RULE 4.5 AMENDMENTS

As we previously informed you, a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit (Circuit Court) held oral argument on May 6 in the lawsuit by ICI and the U.S. Chamber of Commerce challenging the Commodity Futures Trading Commission's (CFTC) amendments to Rule 4.5 under the Commodity Exchange Act. [\\*](#) At oral argument, counsel for ICI and the Chamber argued that one of the significant shortcomings in the rulemaking was the CFTC's complete failure to consider the effect of the Rule 4.5 amendments on liquidity. This sparked questioning from Chief Judge Garland as to whether (and to what degree) such considerations were required.

On Monday, counsel for ICI and the Chamber filed the attached letter to bring to the Circuit Court's attention two recent CFTC rulemakings that give extensive attention to the issue of liquidity. The letter notes that this contradicts the agency's claim at oral argument that liquidity is not necessarily an important consideration when regulating financial markets.

We will continue to keep you apprised of developments in the litigation. We still expect that the Circuit Court will issue a decision before the end of its summer recess.

Rachel H. Graham  
Senior Associate Counsel

[Attachment](#)

**endnotes**

\*See ICI [Memorandum](#) 27222 dated May 7, 2013 (summarizing the oral argument).

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