

MEMO# 26883

January 15, 2013

Court Grants Motion for Expedited Consideration of Appeal in Lawsuit Challenging CFTC Amendments to Rule 4.5

[26883]

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TO: ACCOUNTING/TREASURERS COMMITTEE No. 4-13
BOARD OF GOVERNORS No. 3-13
CLOSED-END INVESTMENT COMPANY MEMBERS No. 8-13
COMPLIANCE MEMBERS No. 4-13
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 9-13
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 3-13
ETF ADVISORY COMMITTEE No. 3-13
EQUITY MARKETS ADVISORY COMMITTEE No. 3-13
FIXED-INCOME ADVISORY COMMITTEE No. 3-13
INVESTMENT ADVISER MEMBERS No. 6-13
OPERATIONS COMMITTEE No. 7-13
SEC RULES MEMBERS No. 10-13
SMALL FUNDS MEMBERS No. 6-13
TRANSFER AGENT ADVISORY COMMITTEE No. 10-13
UNIT INVESTMENT TRUST MEMBERS No. 3-13
VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 3-13 RE: COURT GRANTS
MOTION FOR EXPEDITED CONSIDERATION OF APPEAL IN LAWSUIT CHALLENGING CFTC
AMENDMENTS TO RULE 4.5

Today, the United States Court of Appeals for the District of Columbia Circuit (Circuit Court) granted the motion filed earlier this month by ICI and the U.S. Chamber of Commerce (Appellants). That motion requested expedited consideration of Appellants' appeal of the ruling by the U.S. District Court for the District of Columbia (District Court) upholding the Commodity Futures Trading Commission's (CFTC or Appellee) amendments to Rule 4.5 under the Commodity Exchange Act. [\[1\]](#) The Circuit Court's order, which is attached to this memorandum, sets out the briefing schedule that will apply to the case. The key deadlines are:

Brief for Appellants 1/30/13 Joint Brief of Prospective Amici Curiae in Support of Appellants [2] 2/06/13 Brief for Appellee 3/08/13 Joint Brief of Prospective Amici Curiae in Support of Appellee [3] 3/15/13 Reply Brief for Appellants 3/25/13

The Circuit Court's order states that the case will be calendared for an appropriate date following the completion of the briefing, [4] and notes that any extension of the briefing schedule may result in the case not being calendared this term. Based on this briefing schedule, we are hoping for a decision by Summer 2013.

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Senior Counsel

Rachel H. Graham
Senior Associate Counsel

[Attachment](#)

endnotes

[1] See ICI Memoranda Nos. 26818 (January 3, 2013), available at http://www.ici.org/my_ici/memorandum/memo26818, and 26863 (January 11, 2013), available at http://www.ici.org/my_ici/memorandum/memo26863. The reply brief on the motion that ICI and the Chamber of Commerce filed yesterday is attached to this memorandum. More information relating to the lawsuit may be found on ICI's website at http://www.ici.org/cftc_challenge.

[2] While it is not known at this time if any persons will file such a brief, in the District Court, the Mutual Fund Directors Forum filed an amicus brief in support of ICI and the Chamber of Commerce.

[3] While it is not known at this time if any persons will file such a brief, in the District Court, the National Futures Association and Better Markets, Inc. filed amicus briefs in support of the CFTC.

[4] We understand that the case will be assigned to a three-judge panel at that time.