

MEMO# 27312

June 18, 2013

CFTC Response to Supplemental Filing In Lawsuit Challenging Rule 4.5 Amendments

[27312]

June 18, 2013

TO: ACCOUNTING/TREASURERS COMMITTEE No. 19-13
BOARD OF GOVERNORS No. 10-13
CLOSED-END INVESTMENT COMPANY MEMBERS No. 53-13
COMPLIANCE MEMBERS No. 28-13
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 49-13
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 27-13
ETF ADVISORY COMMITTEE No. 28-13
FIXED-INCOME ADVISORY COMMITTEE No. 12-13
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INVESTMENT ADVISER MEMBERS No. 41-13
INVESTMENT COMPANY DIRECTORS No. 12-13
OPERATIONS MEMBERS No. 14-13
SEC RULES MEMBERS No. 58-13
SMALL FUNDS MEMBERS No. 37-13
TRANSFER AGENT ADVISORY COMMITTEE No. 45-13
UNIT INVESTMENT TRUST MEMBERS No. 15-13
VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 14-13 RE: CFTC RESPONSE TO
SUPPLEMENTAL FILING IN LAWSUIT CHALLENGING RULE 4.5 AMENDMENTS

As we informed you yesterday, counsel for ICI and the Chamber filed a letter with the U.S. Court of Appeals for the District of Columbia Circuit (Circuit Court) regarding two recent rulemakings by the Commodity Futures Trading Commission (CFTC) that give extensive attention to the issue of liquidity. [*](#) The letter notes that this contradicts the CFTC's claim at oral argument that liquidity is not necessarily an important consideration when regulating financial markets.

Attached is the brief response that the CFTC has filed with the Circuit Court. In it, the agency points out that it is not required by Section 15a of the Commodity Exchange Act to consider liquidity in promulgating a rule. The agency also states that, for the reasons given in its brief to the Circuit Court, it "reasonably and sufficiently addressed liquidity in

promulgating the rules challenged in this case.”

We will continue to keep you apprised of developments in the litigation.

Rachel H. Graham
Senior Associate Counsel

[Attachment](#)

endnotes

*See ICI [Memorandum](#) 27308 dated June 17, 2013

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