

MEMO# 26989

February 8, 2013

Fund Directors Group and Former SEC Officials File Amicus Brief in Appeal of District Court Decision Upholding CFTC Amendments to Rule 4.5

[26989]

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TO: ACCOUNTING/TREASURERS COMMITTEE No. 9-13
BOARD OF GOVERNORS No. 5-13
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 5-13
COMPLIANCE MEMBERS No. 10-13
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 17-13
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 10-13
ETF ADVISORY COMMITTEE No. 10-13
FIXED-INCOME ADVISORY COMMITTEE No. 5-13
INVESTMENT ADVISER MEMBERS No. 14-13
INVESTMENT COMPANY DIRECTORS No. 4-13
OPERATIONS MEMBERS No. 5-13
SEC RULES MEMBERS No. 19-13
SMALL FUNDS MEMBERS No. 12-13
TRANSFER AGENT ADVISORY COMMITTEE No. 17-13
UNIT INVESTMENT TRUST MEMBERS No. 6-13
VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 5-13 RE: FUND DIRECTORS
GROUP AND FORMER SEC OFFICIALS FILE AMICUS BRIEF IN APPEAL OF DISTRICT COURT
DECISION UPHOLDING CFTC AMENDMENTS TO RULE 4.5

As you know, ICI and the U.S. Chamber of Commerce (Appellants) have appealed the ruling by the U.S. District Court for the District of Columbia upholding the Commodity Futures Trading Commission's (CFTC) amendments to Rule 4.5 under the Commodity Exchange Act (CEA). On February 6, the Mutual Fund Directors Forum and several former officials of the U.S. Securities and Exchange Commission filed an amicus brief with the U.S. Court of Appeals for the District of Columbia Circuit (Circuit Court) in support of Appellants. [*](#)

The amicus brief makes two principal arguments:

1. The CFTC acted arbitrarily and contrary to law by adopting the new rule without

adequately considering the costs for mutual fund shareholders and the absence of offsetting regulatory benefits.

2. The CFTC neglected to recognize that CPO registration will harm investors by reducing the availability of diversified risk management strategies offered by mutual fund advisers.

Under the schedule for expedited briefing that was established by the Circuit Court, the CFTC must file its brief by March 8.

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endnotes

*The individuals joining the amicus brief are former SEC Chairman Richard C. Breeden; former SEC Commissioners Paul S. Atkins, Edward H. Fleischman, and Joseph A. Grundfest; and former Directors of the SEC's Division of Investment Management Allan S. Mostoff, Paul F. Royce, and Marianne K. Smythe. The amicus brief and additional information relating to the lawsuit may be found on ICI's website at http://www.ici.org/cftc_challenge.

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