

MEMO# 26863

January 11, 2013

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

[26863]

January 11, 2013

TO: ACCOUNTING/TREASURERS COMMITTEE No. 3-13
BOARD OF GOVERNORS No. 2-13
CLOSED-END INVESTMENT COMPANY MEMBERS No. 4-13
COMPLIANCE MEMBERS No. 3-13
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 5-13
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 2-13
ETF ADVISORY COMMITTEE No. 2-13
EQUITY MARKETS ADVISORY COMMITTEE No. 2-13
FIXED-INCOME ADVISORY COMMITTEE No. 2-13
INVESTMENT ADVISER MEMBERS No. 3-13
OPERATIONS COMMITTEE No. 5-13
SEC RULES MEMBERS No. 5-13
SMALL FUNDS MEMBERS No. 5-13
TRANSFER AGENT ADVISORY COMMITTEE No. 8-13
UNIT INVESTMENT TRUST MEMBERS No. 2-13
VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 2-13 RE: CFTC OPPOSES
MOTION FOR EXPEDITED CONSIDERATION OF APPEAL IN LAWSUIT CHALLENGING CFTC
AMENDMENTS TO RULE 4.5

On January 3, ICI and the U.S. Chamber of Commerce (Appellants) filed a motion for expedited consideration of their 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) amendments to Rule 4.5 under the Commodity Exchange Act. [*](#) Today, the CFTC filed a response to Appellants' brief, which opposes their request for expedited consideration by the United States Court of Appeals for the District of Columbia Circuit (Circuit Court). The brief, which is attached, argues that Appellants do not meet the standards for expedited consideration—that in this case, delay will not cause “irreparable injury,” the decision is not subject to “substantial challenge,” and the public interest does

not support expedited consideration.

In support of their motion, the CFTC makes the following primary arguments:

- Appellants have identified no harm, let alone irreparable harm, that ordinary review will cause. The CFTC argues that, given the December 31, 2012 registration deadline has passed, any associated costs have already been incurred, and any costs associated with the harmonization rulemaking are uncertain.
- Appellants cannot show a “strongly compelling” case that the decision under review is subject to substantial challenge, given the correct findings of the District Court.
- The public interest lies in the Circuit Court resolving the case carefully and correctly.

Appellants requested in their brief that the Circuit Court rule on the motion for expedited consideration by January 18, 2013. Appellants intend to respond to the CFTC’s brief prior to that date.

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Senior Counsel

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Senior Associate Counsel

[Attachment](#)

endnotes

[*] See ICI Memorandum No. 26818 (January 3, 2012), available at http://www.ici.org/my_ici/memorandum/memo26818. More information relating to the lawsuit may be found on ICI’s website at http://www.ici.org/cftc_challenge.