

## ICI, U.S. Chamber Appeal Challenge to CFTC Rule 4.5 to the DC Circuit

# ICI, U.S. Chamber Appeal Challenge to CFTC Rule 4.5 to the D.C. Circuit

**Washington, DC, December 27, 2012** - The Investment Company Institute (ICI) and the U.S. Chamber of Commerce today filed a [notice of appeal](#) of a recent 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 imposing redundant regulations on registered investment companies, such as mutual funds and exchange traded funds (ETFs). The case will be appealed to the U.S. Court of Appeals for the District of Columbia Circuit.

"The District Court's decision fell far short of well-established D.C. Circuit precedent requiring agencies to adequately measure the costs imposed by capital markets regulations on businesses, investors, and the economy as a whole, and to weigh them against the desired benefits," said David Hirschmann, President and CEO of the Chamber's Center for Capital Markets Competitiveness. "Nothing in the District Court's decision changes the fact that the CFTC did not adequately consider alternative approaches to its flawed and overly-broad approach, which will only inject more confusion into our capital markets without offering any clear benefits to investors. We look forward to presenting our arguments to the D.C. Circuit."

"We brought this challenge because the CFTC failed to justify the regulatory excess and added costs of its amendments to Rule 4.5, which would impose that agency's regulatory regime atop the comprehensive regulation already applied to registered funds by the Securities and Exchange Commission," said ICI President and CEO Paul Schott Stevens. "We believe the District Court decision is deeply flawed and will clearly harm the many shareholders of registered funds that will bear the costs of overlapping regulation by two agencies."

Today's appeal is in response to a December 12, 2012 decision by the District Court upholding the CFTC's Rule 4.5 amendments. As a result of those amendments, many advisers to registered funds already regulated by the SEC will be subjected to dual regulation by the CFTC as commodity pool operators (CPOs). CFTC regulations duplicate and in some cases conflict with the comprehensive regulation provided by the SEC.

The ICI-Chamber lawsuit argued that the amended Rule 4.5 imposes unnecessary, overlapping, and burdensome regulations on registered funds, their advisers, and, ultimately, fund shareholders. The lawsuit charged that the Rule 4.5 amendments are arbitrary and capricious, and that the CFTC violated the Administrative Procedure Act as well as the Commodity Exchange Act.

For more information about the case, please visit the [ICI Commodity Investment Resource Center](#) or the [National Chamber Litigation Center's webpage](#).

ICI, founded in 1940, is the national association of U.S. investment companies, including mutual funds, closed-end funds, unit investment trusts, and exchange-traded funds. Members of ICI manage total assets of \$13.8 trillion and serve more than 90 million shareholders. [www.ici.org](http://www.ici.org).

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. Since its inception in 2007, the Center for Capital Markets Competitiveness has led a bipartisan effort to modernize and strengthen the outmoded regulatory systems that have governed our capital markets. The CCMC is committed to working aggressively with the administration, Congress, and global leaders to implement reforms to strengthen the economy, restore investor confidence, and ensure well-functioning capital markets.

