

ICI VIEWPOINTS

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All Funds and Investors Have a Stake in Our Challenge to CFTC

By Paul Schott Stevens

ICI and the [U.S. Chamber of Commerce](#) have joined together in a legal challenge to a rule by the Commodity Futures Trading Commission (CFTC). We are asking the U.S. District Court for the District of Columbia to vacate and set aside the CFTC's recent amendments to its Rule 4.5.

We don't bring such an action lightly. ICI and its members exerted a great deal of effort in hopes of helping the CFTC arrive at a workable rule to meet its objectives. The Institute, for example, filed three [comment letters](#), met with the CFTC's commissioners, participated in the Commission's [roundtable](#), and [testified on Capitol Hill](#). Many of our members filed comments as well.

Why All Funds Should Be Concerned

We undertook these efforts—and we now are challenging the rule—because *all* of our funds will be affected by this rule if it is allowed to stand. The amendments would impose upon *all* funds that may, even potentially, invest in futures, options, or swaps the burden of continually monitoring their portfolio composition, trading, and marketing activities—just to be certain whether or not they trigger the rule.

Funds could be forced to choose between limiting investment activity—activity that helps manage risks, lowers investment costs, and provides investors with desired diversification—or falling subject to CFTC registration as commodity pool operators (CPOs). A preliminary survey suggests that hundreds of funds and scores of advisers likely would be subject to the rule, because of its broad reach. Still other funds would be swept into CFTC regulation because of the vague, subjective marketing test imposed by the CFTC.

Rule 4.5 and Its Heavy Impact

The CFTC rule is unnecessary, redundant, and costly—and those costs ultimately will be borne by investors.

- **Unnecessary:** Mutual funds and other registered investment companies are already the most highly regulated entities in the financial industry. The CFTC has not demonstrated that existing regulation of registered investment companies is insufficient.
- **Redundant:** The CFTC rule layers the agency's own regulatory regime atop the Securities and Exchange Commission's comprehensive regulation, without remotely justifying such an extra burden on funds.
- **Costly:** The rule will impose significant compliance costs on funds. Ultimately, these costs will come out of shareholders' pockets.

The burdens that the CFTC's amended Rule 4.5 will place upon funds and their investors are of such significance, and the process by which these amendments were adopted fell so far short of the agency's legal obligations, that we felt we had no choice but to challenge this rule.

We've set up an [online resource center](#) where you can find our [legal complaint](#), along with a range of other materials that illuminate our arguments.

Paul Schott Stevens was President and CEO of ICI.

