

Client Alert

Current Issues Relevant to Our Clients

June 26, 2013

D.C. Circuit Court Upholds CFTC Amendments to Rule 4.5

In 2012 the Commodity Futures Trading Commission (the “CFTC”) significantly narrowed the CFTC Rule 4.5 exclusion from the definition of commodity pool operator (“CPO”) available to operators of investment companies registered under the Investment Company Act of 1940 (“RICs”). In 2012, the Investment Company Institute (“ICI”) and U.S. Chamber of Commerce (the “Chamber”) filed a legal challenge to the CFTC’s amendments to Rule 4.5 charging that the amendments were arbitrary and capricious and that the CFTC violated the Administrative Procedure Act as well as the Commodity Exchange Act. In December 2012, the U.S. District Court for the District of Columbia dismissed the ICI and Chamber’s challenge and upheld the CFTC’s amendments to Rule 4.5. The ICI and Chamber appealed the federal district court’s decision to the U.S. Court of Appeals for the District of Columbia Circuit (the “D.C. Circuit Court”).

On June 25, the D.C. Circuit Court affirmed the decision of the federal district court. A copy of the D.C. Circuit Court’s opinion is available [here](#). After the D.C. Circuit Court’s opinion was issued upholding the CFTC amendments to Rule 4.5, the General Counsel for the ICI, Karrie McMillan, stated that “While we continue to believe that the CFTC’s recent amendments to Rule 4.5 were improperly adopted, we intend to focus on ensuring that the CFTC’s regulatory regime as it evolves does not adversely affect fund investors.”

For additional information on the CFTC’s adoption of the amendments to Rule 4.5 along with information about certain other related CFTC rule changes and proposals and other commodity-related developments impacting RICs, see previous client alerts available [here](#) and [here](#).

For More Information

If you would like to discuss any of the topics covered in this alert, please contact any member of our Investment Management Group or visit us online at chapman.com.

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