

**U.S. COMMODITY FUTURES TRADING COMMISSION**

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Office of General Counsel

June 18, 2013

Via CM/ECF

Mark Langer, Clerk  
U.S. Court of Appeals for the D.C. Circuit  
E. Barrett Prettyman U.S. Courthouse  
333 Constitution Avenue, N.W.  
Washington, DC 20001

Re: *Investment Company Institute, et al. v. CFTC*, No. 12-5413

Dear Mr. Langer:

The Commodity Futures Trading Commission (“CFTC” or “Commission”) respectfully submits this letter pursuant to Federal Rule of Appellate Procedure 28(j), in response to Appellants’ letter dated June 17, 2013. Appellants’ letter cites two recent CFTC rule releases (regarding rules not before this Court) as support for their argument that “when regulating financial markets,” an agency must “*always*” consider “[e]ffects on liquidity.” (Reply at 1 (emphasis in original); *see also* Tr. of Oral Arg. (May 6, 2013) at 4.) That is not correct, and the CFTC’s recent releases provide no support for that proposition.

Section 15a of the Commodity Exchange Act, 7 U.S.C. § 19a, lists five considerations the CFTC must take into account when promulgating a rule. *See id.* § 19a(a)(2). Liquidity is not among those considerations. *Id.* As discussed at argument, it is rational in some contexts for the CFTC to discuss the subject of liquidity. (Tr. of Oral Arg. at 22-23.) For the reasons given in the CFTC’s brief, the Commission reasonably and sufficiently addressed liquidity in promulgating the rules challenged in this case. (Br. for the CFTC at 27-29.)

Respectfully submitted,

/s/ Robert A. Schwartz

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**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Appellate Procedure 25(d), I hereby certify that on this 18th day of June, 2013, the foregoing letter was electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia using the CM/ECF system.

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