

ORAL ARGUMENT SCHEDULED FOR FRIDAY, APRIL 15, 2005

NO. 04-1300

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
Petitioner,

v.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,
Respondent.

**Petition for Review of Final Rule of the
United States Securities and Exchange Commission**

**STATEMENT OF
PETITIONER U.S. CHAMBER OF COMMERCE
IN RESPONSE TO SECURITIES AND EXCHANGE COMMISSION'S
MOTION TO CONSIDER ITS RESPONSE REGARDING STANDING**

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With its Reply Brief in this case, petitioner U.S. Chamber of Commerce provided a supplemental declaration that contained a single sentence of information not contained in the earlier declarations accompanying its Opening Brief. The declaration received one mention in the Reply Brief.

In response, respondent Securities and Exchange Commission has filed a five-page “Motion To Consider Its Response To Petitioner’s Supplemental Declaration.” The Motion, which also serves as the Commission’s proposed Response, is used principally to repeat arguments from the Commission’s Response Brief, and to present for the first time arguments that were available when that brief was filed, but that were not made by the Commission at the time.

The Chamber does not oppose the Commission’s Motion, although the proposed Response is unlikely to aid the Court’s decision of the case. It is self-evident, the Chamber submits, that when the SEC promulgates a rule that has the intent and effect of curbing mutual fund advisers’ “control” of mutual funds, mutual fund advisers have standing to challenge the rule, and so does an association that represents them. Likewise, a rule intended to affect investors and the investments they hold may be challenged by an investor, which the Chamber indisputably is. (The proposed Response does not address the Chamber’s standing as an investor.)

Mindful of this Court’s teaching in *Sierra Club v. EPA*, 292 F.3d 895 (D.C. Cir. 2002), the Chamber provided a sworn declaration supporting standing when the Commission first raised the issue in connection with the Chamber’s *Motion for Stay*

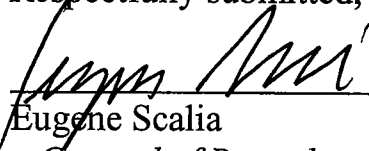
or, Alternatively, for Expedited Briefing. Evidence of standing was again provided with the Chamber's Opening Brief and, when the Commission's Response Brief mused that perhaps none of the Chamber's 30 or more adviser members advise funds that engage in exemptive rule transactions, the Chamber provided evidence affirming that Chamber members do in fact advise funds where the fund has a management chair, fewer than 75 percent independent directors, and engages in exemptive rule transactions. This information hardly surprised or prejudiced the Commission, which itself has stated that "almost all" funds engage in exemptive rule transactions or plan to, and premised this rulemaking on that very fact.

At oral argument, the Chamber will, of course, be prepared to address any of the contentions regarding standing raised in the Commission's filing that the Court believes merit response.

Dated: February 24, 2005

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Respectfully submitted,



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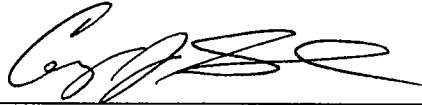
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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February, 2005, I have caused to be served a true and correct copy of Statement of Petitioner U.S. Chamber of Commerce in Response to Securities and Exchange Commission's Motion to Consider Its Response Regarding Standing by hand, upon the following:

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