

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

CHAMBER OF COMMERCE
OF THE UNITED STATES OF AMERICA,

Plaintiff,

v.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Defendant.

Case No. 1:04CV01522

**PLAINTIFF’S STATEMENT IN RESPONSE
TO DEFENDANT’S MOTION TO TRANSFER**

In response to the September 9, 2004 *Motion to Transfer* of defendant United States Securities and Exchange Commission (the “Commission”), plaintiff Chamber of Commerce of the United States of America (the “Chamber”) hereby states as follows:

1. On September 2, 2004, the Chamber filed a Complaint in this Court challenging certain provisions of the Commission’s final mutual fund “governance” rule. Investment Company Governance; Final Rule; 69 Fed. Reg. 46,378 (Aug. 2, 2004). Because there is uncertainty whether jurisdiction lies in this Court or in the federal courts of appeals, the Chamber has also filed a Petition for Review in the United States Court of Appeals for the District of Columbia Circuit. *See Investment Co. Inst. v. Board of Governors of Fed. Reserve*, 551 F.2d 1270, 1280 (D.C. Cir. 1977) (indicating that when there is uncertainty whether the district court or court of appeals has jurisdiction to review agency action, filing in both courts is appropriate).

2. On September 9, the Commission filed with this Court its *Motion to Transfer Action to the United States Court of Appeals*, asserting that jurisdiction properly lay in that court.

3. On September 20, the Chamber filed in the D.C. Circuit a *Motion for Stay, or, Alternatively, for Expedited Briefing*, which is attached hereto as Exhibit 1. (Because it is voluminous, the Appendix to the *Motion for Stay* is not included with this filing. The Appendix will be made available immediately upon request by the Court.) That motion requests, as a threshold matter, that the court of appeals determine whether jurisdiction lies with that court or with this Court. *See Investment Co. Inst.*, 551 F.2d at 1280 (“from the standpoint of judicial efficiency, the court of appeals should have the first opportunity to pass on the jurisdictional question” in these circumstances). In its *Motion for Stay*, the Chamber requests a ruling by the court of appeals no later than October 18, 2004.

4. In light of the pending motion before the court of appeals, the Chamber respectfully requests that this Court defer consideration of defendant’s *Motion to Transfer* pending the court of appeals’s decision of the jurisdictional issue. The Chamber has conferred with the Commission regarding the contents of this Response.

Dated: September 20, 2004

Respectfully submitted,

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