

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

INVESTMENT COMPANY INSTITUTE
and CHAMBER OF COMMERCE OF
THE UNITED STATES OF AMERICA,

Appellants,

v.

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Appellee.

No. 12-5413

**APPELLANTS' OPPOSITION TO THE JOINT MOTION OF
NATIONAL FUTURES ASSOCIATION AND BETTER MARKETS, INC.
TO EXCEED WORD LIMIT**

This Court “disfavors motions to exceed limits on the length of briefs,” and accordingly “such motions will be granted only for extraordinarily compelling reasons.” D.C. Cir. R. 28(e)(1). The National Futures Association and Better Markets, Inc. (together, “*amici*”) seek to increase the length of their joint brief by 3,000 words—almost 50% of the 7,000 word limit—and yet do not even come close to satisfying this demanding standard. None of the parties to the appeal have sought extensions, and the eight separate *amici* supporting Appellants were able to file a single brief complying with the limit.

Unable to satisfy the standard for an extension of the word limit, *amici* contend—incredibly—that the standard does not even apply to *amicus* briefs. But this Court’s rules make no such exception. Because the standard does apply, and is decidedly not satisfied here, *amici*’s motion should be denied.

A. This Court’s Rule 28(e) Makes No Exception For *Amicus* Briefs.

This Court’s Rule 28(e) refers to “motions to exceed limits on the lengths of briefs,” without distinguishing among different types of briefs. *Amici* nonetheless suggest that the Rule does not mean what it says; in their view, it makes an implicit exception for *amicus* briefs. But when Rule 28(e) refers to “briefs,” there is no reason to conclude it means anything other than *all* “briefs” that might be filed.

Amici base their contrary reading on the fact that the rules specifically governing *amicus* briefs do not cross-reference Rule 28(e). A rule that applies on its face to “briefs,” however, need not be cross-referenced elsewhere to apply to *amicus* briefs. The rules likewise do not cross-reference the provisions of this Court’s Rule 28(e) concerning extensions of time, but surely *amici* do not contend that they are also entitled to a more generous standard when seeking to extend a filing deadline. There is no inconsistency between Rule 28(e)’s general standard for extensions of word limits for “briefs” and the specific rules governing *amicus* briefs; instead, Rule 28(e) applies to briefs of all shapes and (within its limits) sizes.

B. *Amici* Do Not Present Extraordinarily Compelling Circumstances.

Amici fail to point to any circumstances unique to this case that might justify an extension of the word limit, let alone amount to “extraordinarily compelling” reasons for such an extension. There are not a large number of *amici* joining the brief in issue. To the contrary, *amici* represent only two separate entities; there cannot be fewer signatories to a brief filed by “*amici*.” And no parties or *amici* have been granted an extension; to the contrary, the eight separate *amici* supporting Appellants submitted a single brief within the 7,000 word limit.

Amici point to the “importance of this case, the complexity of the issues, and the unique contribution that each *amicus* can make” as extenuating circumstances purportedly justifying an extension. Mot. 9. But the “importance” of the case is no reason to grant an extension; even the most important cases can be and usually are briefed within the generous word limits established by the rules. Nor is this case—which calls for a straightforward application of administrative law to a relatively short rulemaking—any more complex than any number of cases that this Court hears on a regular basis. The standards to be applied are established by the Administrative Procedure Act, the Commodity Exchange Act, and this Court’s decisions interpreting a similar cost-benefit provision in *American Equity Investment Life Insurance Co. v. SEC*, 613 F.3d 166 (D.C. Cir. 2010), and *Business Roundtable v. SEC*, 647 F.3d 1144 (D.C. Cir. 2011), among other cases. While

this case might require consideration of “multiple legal and factual issues” under the relevant legal standards, Mot. 11, that is true of almost every case and hardly rises to the level of an extraordinarily compelling circumstance.

Amici also suggest (at 11) that these two organizations can provide “unique and helpful insights,” but they fail to explain why they believe it would be impossible to do so within the generally applicable 7,000-word limit. Many (if not all) *amici* believe that they provide “unique and helpful insights”—that is, after all, precisely why they seek to participate as *amici*. Yet if that fact were sufficient to afford these two *amici* an extension of the word limit, then an extension would be warranted in practically every case. There is no reason why these two prospective *amici* should not be held to the same rules that apply to everyone else—including the eight *amici* who submitted a brief in support of Appellants.

CONCLUSION

The fact that *amici*'s motion for additional words was 12 pages long, including a three-page introduction, suggests that economy of expression is not among their strengths, and that the constraint imposed by the Court's usual word limit will benefit them and all concerned. Their motion for an increased word limit should be denied.

Dated: March 11, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of March, 2013, I caused the foregoing pleading to be filed with the Clerk of Court for the United States Court of Appeals for the D.C. Circuit using the appellate CM/ECF system.

I further certify that I caused the foregoing pleading to be served on counsel for all parties by the CM/ECF system.

/s/ Eugene Scalia
Eugene Scalia