

**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

**STATEMENT OF ISSUES**

Pursuant to this Court's Order dated January 3, 2013, Appellants Investment Company Institute and Chamber of Commerce of the United States of America file this Statement of Issues:

1. Whether the Commission arbitrarily and capriciously failed to address the facts and circumstances that underlay its 2003 rulemaking, including its prior finding that eliminating registration thresholds would provide increased liquidity.
2. Whether the Commission acted arbitrarily and capriciously, and in violation of the cost-benefit provision of the CEA, when it failed to assess the baseline of protection afforded by existing regulation and promulgated its rule in a manner that made it impossible to meaningfully determine the rule's costs and

benefits, and when it repeatedly failed to address significant comments and alternatives presented by commenters.

3. Whether the Commission acted arbitrarily and capriciously when it declined to exclude swap transactions from the registration threshold on the ground that it did not know how to write such a rule, adopted a restrictive definition of *bona fide* hedging without explaining why it was rejecting proposed alternatives, and failed to provide a reasoned justification for setting the registration threshold at five percent.

4. Whether the Commission provided an inadequate opportunity for notice and comment.

5. Whether the numerous deficiencies in the rulemaking process warrant vacatur of the Commission's rule.

Dated: January 30, 2013

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of January, 2013, I caused the foregoing Statement of Issues 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 Statement of Issues to be served on the following by the CM/ECF system:

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