

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

v.

UNITED STATES COMMODITY FUTURES  
TRADING COMMISSION,  
Defendant.

Civil Action No. 12-cv-00612 (BAH)  
Judge Beryl A. Howell

**DEFENDANT COMMODITY FUTURES TRADING COMMISSION'S  
MOTION FOR LEAVE TO FILE A REPLY**

The U.S. Commodity Futures Trading Commission (“CFTC” or the “Commission”) hereby moves for leave to file a three-page reply to Plaintiffs’ October 22, 2012 Supplemental Response regarding the definition of bona fide hedging (ECF Doc. No. 38). A copy of the proposed response is attached hereto. Counsel for the CFTC contacted counsel for Plaintiffs on Thursday afternoon, October 25, 2012, to request consent to this motion, but Plaintiffs were not in a position to respond at that time, and the Commission does not know at the time of this filing whether Plaintiffs will oppose.

This Court should grant the CFTC leave to file this short reply for two reasons. First, the CFTC wishes to respond to new, and, in the CFTC’s view, inaccurate arguments Plaintiffs have advanced concerning bona fide hedging. Second, Plaintiffs raise an additional issue in their submission that first arose at the October 5 hearing concerning the date by which registered investment companies must comply with Rule 4.27. In the attached reply, the Commission agrees with Plaintiffs’ reading of the rule release.

The CFTC’s proposed Reply will be of benefit to the Court in its deliberations in this

matter and will narrow the scope of the dispute. The proposed Reply is short and tailored to the matters raised in Plaintiffs' submission.

Conclusion

For the reasons set forth above, this Court should grant the CFTC's motion for leave to file a three-page reply. A draft order accompanies this Motion.

Respectfully submitted,

/s/ Robert A. Schwartz

Robert A. Schwartz  
DC Bar No. 489240

Dan M. Berkovitz  
*General Counsel*  
Jonathan L. Marcus  
*Deputy General Counsel*  
Robert A. Schwartz  
*Assistant General Counsel*  
Nancy R. Doyle  
*Assistant General Counsel*  
Martin B. White  
*Assistant General Counsel*  
Melissa Chiang  
*Counsel*

Commodity Futures Trading Commission,  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581  
(202) 418-5958  
[rschwartz@cftc.gov](mailto:rschwartz@cftc.gov)

October 25, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on October 25, 2012, I caused the foregoing document to be served on all counsel via the Court's CM/ECF electronic filing system.

/s/ Robert A. Schwartz  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581  
(202) 418-5958  
rschwartz@cftc.gov