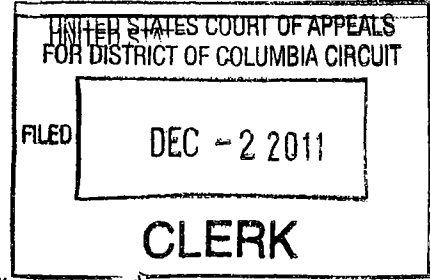


UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

333 Constitution Avenue, NW
Washington, DC 20001-2866
Phone: 202-216-7000 | Facsimile: 202-219-8530



DEC -2 2011

RECEIVED

AGENCY DOCKETING STATEMENT

Administrative Agency Review Proceedings (To be completed by appellant/petitioner)

1. CASE NO. _____
2. DATE DOCKETED: December 2, 2011 **11-1469**
3. CASE NAME (lead parties only) International Swaps and Derivatives Association V. U.S. Commodity Futures Trading Commission
4. TYPE OF CASE: Review Appeal Enforcement Complaint Tax Court
5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? Yes No
If YES, cite statute _____
6. CASE INFORMATION:
 - a. Identify agency whose order is to be reviewed: U.S. Commodity Futures Trading Commission
 - b. Give agency docket or order number(s): RIN 3038-AD17
 - c. Give date(s) of order(s): November 18, 2011
 - d. Has a request for rehearing or reconsideration been filed at the agency? Yes No
If so, when was it filled? _____ By whom? _____
Has the agency acted? Yes No If so, when? _____
 - e. Identify the basis of appellant's/petitioner's claim of standing. See D.C. Cir. Rule 15(c)(2):
At least one of Petitioners' members would have standing to sue in its own right, the interests Petitioners seek to protect are germane to their purpose, and neither the claim asserted nor the relief requested requires an individual member to participate in this suit.
See Theodore Roosevelt Conservation P'ship v. Salazar, 616 F.3d 497, 507 (D.C. Cir. 2010).
 - f. Are any other cases involving the same underlying agency order pending in this Court or any other?
 Yes No If YES, identify case name(s), docket number(s), and court(s)
Although Petitioners submit that this Court has jurisdiction to adjudicate their claims in the first instance, Petitioners also intend to file suit in the U.S. District Court for the District of Columbia out of an abundance of caution.
 - g. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve *substantially the same issues* as the instant case presents?
 Yes No If YES, give case name(s) and number(s) of these cases and identify court/agency: _____
 - h. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for dispute resolution? Yes No If YES, provide program name and participation dates. _____

Signature Miguel A. Estrada Date December 2, 2011
 Name of Counsel for Appellant/Petitioner Miguel A. Estrada
 Address Gibson, Dunn & Crutcher LLP, 1050 Connecticut Ave., N.W. 20036
 E-Mail MEstrada@gibsondunn.com Phone (202) 955 - 8500 Fax (202) 530 - 9616

ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 7 calendar days by letter, with copies to all other parties, specifically referring to the challenged statement.

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

INTERNATIONAL SWAPS AND
DERIVATIVES ASSOCIATION and
SECURITIES INDUSTRY AND FINANCIAL
MARKETS ASSOCIATION,

Petitioners,

v.

UNITED STATES
COMMODITY FUTURES TRADING
COMMISSION,

Respondent.

PETITION FOR REVIEW

Case No. ~~11-1469~~

11-1469

The International Swaps and Derivatives Association and the Securities Industry and Financial Markets Association respectfully petition this Court, pursuant to Rule 15(a) of the Federal Rules of Appellate Procedure and the Commodity Exchange Act of 1936, 7 U.S.C. §§ 1 *et seq.*, for review of a rule of the United States Commodity Futures Trading Commission (“CFTC”) imposing position limits for certain futures and options contracts and swaps. The CFTC adopted this rule at an Open Meeting on October 18, 2011. The final rule release, a copy of which is attached hereto, was published in the Federal Register on November 18, 2011. *See* Position Limits for Futures and Swaps; Final Rule and Interim Final Rule, 76 Fed.

Reg. 71,626 (to be codified at parts 1, 150, and 151 of Title 17 of the Code of Federal Regulations).

This Court has jurisdiction over final actions of the CFTC pursuant to the Commodity Exchange Act, 7 U.S.C. §§ 2, 8, 9, 10a, 12a, 13b, 15, 18, 21, 26, 27d, and pursuant to Section 712(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010). *See Clark v. CFTC*, 170 F.3d 110, 114 (2d Cir. 1999) (CEA vests original jurisdiction in the court of appeals in light of “the extensive jurisdiction conferred on courts of appeals to review other decisions and orders of the Commission”).

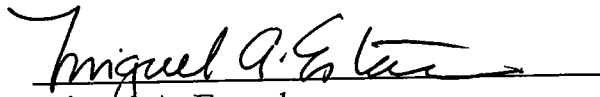
There nevertheless may be some question as to the proper forum to file this challenge based on the lack of direct precedent. Therefore, out of an abundance of caution, Petitioners also intend to file a complaint setting forth their claims in the U.S. District Court for the District of Columbia. *See Inv. Co. Inst. v. Bd. of Governors of Fed. Reserve*, 551 F.2d 1270, 1280 (D.C. Cir. 1977) (“If any doubt as to the proper forum exists, careful counsel should file suit in both the court of appeals and the district court or, since there would be no [pressing] time bar to a proper action in the district court, bring suit only in the court of appeals.”).

Petitioners ask this Court to hold the rule unlawful under the Administrative Procedure Act (5 U.S.C. §§ 551 *et seq.*) and Sections 4a and 15(a) of the Commodity

Exchange Act (7 U.S.C. §§ 6a, 19(a)), to vacate the rule, and to grant such other relief as the Court deems appropriate.

Dated: December 2, 2011

Respectfully submitted,



Miguel A. Estrada

Counsel of Record

Eugene Scalia

Jason J. Mendro

Nikesh Jindal

John F. Bash

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Telephone: (202) 955-8500

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Counsel for Petitioners

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

INTERNATIONAL SWAPS AND
DERIVATIVES ASSOCIATION and
SECURITIES INDUSTRY AND FINANCIAL
MARKETS ASSOCIATION,

Petitioners,

v.

UNITED STATES
COMMODITY FUTURES TRADING
COMMISSION,

Respondent.

PETITION FOR REVIEW

Case No. _____

CORPORATE DISCLOSURE STATEMENT

Pursuant to Circuit Rules 15(c)(3) and 26.1, Petitioners International Swaps and Derivatives Association (“ISDA”) and Securities Industry and Financial Markets Association (“SIFMA”) state as follows:

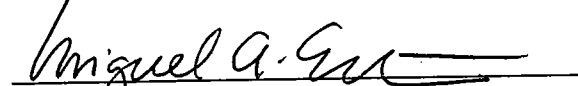
1. Petitioner ISDA is a non-profit, tax-exempt organization incorporated in the District of Columbia.
2. Petitioner SIFMA is a non-profit, tax-exempt organization incorporated in the State of Delaware.
3. Petitioners are each non-stock corporations and thus have no parent organizations.

4. Because Petitioners are non-stock corporations, no publicly held corporations hold 10% or more of their stock.

5. Petitioners are unaware of any publicly held corporation that is not a party to the proceeding before this Court that has any direct financial interest in the outcome of this proceeding.

Dated: December 2, 2011

Respectfully submitted,



Miguel A. Estrada

Counsel of Record

Eugene Scalia

Jason J. Mendro

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**IN THE
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INTERNATIONAL SWAPS AND
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Petitioners,

v.

UNITED STATES
COMMODITY FUTURES TRADING
COMMISSION,

Respondent.

PETITION FOR REVIEW

Case No. _____

**PETITIONERS' PROVISIONAL CERTIFICATE
AS TO PARTIES, RULINGS, AND RELATED CASES**

Pursuant to Circuit Rules 15(c)(3) and 28(a)(1), Petitioners International Swaps and Derivatives Association ("ISDA") and Securities Industry and Financial Market Association ("SIFMA") state as follows:

(A) Parties and Amici:

The parties in this case are ISDA (Petitioner), SIFMA (Petitioner), and the United States Commodity Futures Trading Commission (Respondent). There currently are no intervenors or amici.

ISDA is an association that represents participants in the privately negotiated derivatives industry. It promotes sound risk management practices and processes,

and engages constructively with policymakers and legislators around the world to advance the understanding and treatment of derivatives as a risk-management tool. ISDA now has more than 825 members, including global, international, and regional banks; asset managers; energy and commodities firms; government and supranational entities; insurers and diversified financial institutions; and corporations, law firms, exchanges, clearinghouses, and other service providers.

SIFMA is an association of hundreds of securities firms, banks, and asset managers. Its mission is to support a strong financial industry, investor opportunity, capital formation, job creation, and economic growth, while building trust and confidence in the financial markets.

(B) Rulings Under Review:

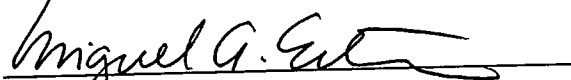
Under review in this case is a final rule promulgating regulations pertaining to position limits for commodity derivatives. The rule was adopted by the Commission at an open meeting on October 18, 2011. It was published in the Federal Register on November 18, 2011. *See* Position Limits for Futures and Swaps; Final Rule and Interim Final Rule, 76 Fed. Reg. 71,626 (to be codified at parts 1, 150, and 151 of Title 17 of the Code of Federal Regulations).

(C) **Related Cases:**

Although Petitioners submit that this Court has jurisdiction to adjudicate their claims in the first instance, Petitioners also intend to file suit in the U.S. District Court for the District of Columbia out of an abundance of caution.

Dated: December 2, 2011

Respectfully submitted,



Miguel A. Estrada

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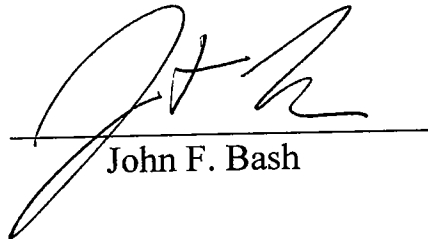
Counsel for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the Docketing Statement, Petition for Review, Corporate Disclosure Statement, and Petitioners' Provisional Certificate as to Parties, Rulings, and Related Cases via hand delivery this 2nd day of December, 2011, upon the following:

United States Attorney for the District of Columbia
501 3rd Street, N.W., 4th Floor
Washington, DC 20530

U.S. Commodity Futures Trading Commission
3 Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581


John F. Bash