

1. CMOC is an independent, non-partisan and non-profit alliance of organizations that represents commodity-dependent industries, businesses and end users of commodities. CMOC was initiated in 2007 by two non-profit retail petroleum industry trade associations in response to what its members perceived as increasingly unpredictable and volatile commodities future markets, and out of concern over apparently excessive speculation in those markets. Its membership has increased substantially since then.² Although not required by D.C. Circuit Rules 26.1 or 28(a)(1)(A), a list of those members of CMOC presently anticipated to join in CMOC's participation in this appeal may be found attached hereto as Addendum C. Additional participants are anticipated, and CMOC will submit an updated list to the Court once it knows those additional participants.

2. CMOC exists to promote its members interests in legislative, regulatory, and litigation matters related to the commodities markets because its members rely on functional, transparent, and competitive commodity derivatives

² Pursuant to the formal requirements of D.C. Cir. Rule 26.1, CMOC states that it is uncertain whether it is a "trade association," as that term is defined in D.C. Cir. Rule 26.1(b). *See id.* ("For purposes of this rule, a 'trade association' is a continuing association of numerous organizations or individuals operated for the purpose of promoting the general commercial, professional, legislative, or other interests of the membership."). The CMOC is unincorporated and nonprofit, and neither its members nor any parent or publicly-held company have an ownership interest in it. Pursuant to D.C. Cir. Rule 26.1(b), CMOC represents that no members of CMOC have issued shares or debt securities to the public. These representations, along with those in paragraphs 1 and 2 above, are repeated in the attached Addendum B, CMOC's Corporate Disclosure Statement.

markets as a hedging and price discovery tool.³ CMOC therefore advocates in favor of government policies that promote stability and confidence in the commodities markets; that seek to prevent fraud, manipulation and excessive speculation; and that preserve the interests of bona fide hedgers and consumers.

3. Under D.C. Cir. Rule 29(b), the Court “encourages individuals and non-governmental entities to file a written representation of consent or motion for leave to participate” as an amicus curiae “as promptly as practicable after the case is docketed in this court.” D.C. Cir. R. 29(b).

4. CMOC requested consent from all parties to participate as an amicus curiae in this appeal through the filing of a separate amicus brief.

5. Defendant-Appellant CFTC has consented to CMOC’s participation as amicus curiae in this appeal and to CMOC’s filing of an amicus brief separate from those of other amici.

6. Plaintiffs-Appellees, the International Swaps and Derivatives Association and the Securities Industry and Financial Markets Association (“ISDA” and “SIFMA,” respectively) consent to the participation of CMOC only

³ Hedging is an investment strategy whereby one attempts to offset the risk of loss in one investment through a second investment. Price discovery is the basic method for determining the price of a specific commodity in the market based on interactions between buyers and sellers. See Staff Report, U.S. Permanent Subcommittee on Investigations, *Excessive Speculation in the Wheat Market*, S. HRG. 111-155 (July 21, 2009) at 2, 54.

on the condition that CMOC join in a single amicus brief with other amici in support of CFTC.

7. Since ISDA and SIFMA have thus consented only conditionally, CMOC moves for leave to participate as amicus curiae under D.C. Cir. Rule 29(b) rather than submitting a representation of consent under that same rule.

8. CMOC wishes to participate as an amicus curiae by filing a separate brief to ensure that its members—representatives of actual users of the commodities at issue for whose benefit the Dodd-Frank Amendments and CFTC rules were written—are heard.

9. Pursuant to Federal Rule of Appellate Procedure 29, because it has received conditional consent from ISDA and SIFMA, and unless otherwise directed by the Court, CMOC will file a separate motion for leave to file its amicus brief in conformity with the content and motion requirements of Federal Rule of Appellate Procedure 29(b) and the timing requirements of Federal Rule 29(e). The motion and brief will argue CMOC's view that through the Dodd-Frank Amendments to the Commodities Exchange Act, Congress mandated swift, decisive action by the CFTC to curb excessive commodities speculation that harms end users and bona fide hedgers like the members of CMOC. The effect of the decision of the court below, CMOC will further argue, is to perpetuate harm for its

members and other users and bona fide hedgers in contravention of the will of Congress.

10. Without CMOC's participation, CMOC believes the Court will hear only from associations representing private entities of the type the Dodd-Frank Amendments to the Commodities Exchange Act and the CFTC rules were written to govern. ISDA's members include "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." Complaint at ¶ 9. SIFMA is composed of "securities firms, banks, and asset managers." *Id.* at ¶ 10.

11. Pursuant to D.C. Circuit Rule 29(d), and likewise unless otherwise directed by the Court, CMOC will include with its proposed brief a "certificate of counsel plainly stating why" a "separate brief is necessary."

12. CMOC anticipates that its D.C. Circuit Rule 29(d) certification will emphasize the breadth of its coalition and the substantive importance of hearing, on relatively equal terms, from both participants in financial services industries, like ISDA and SIFMA, and commodity end users and bona fide hedgers, like the members of CMOC.

13. CMOC also anticipates that this certification will include substantially the same points argued by Senators Levin et al. in their filings to this

Court of March 6 and March 11, 2013, regarding the appropriateness of separating amicus briefs by members of Congress from amicus briefs by other persons or entities.

14. While Senators Levin et al. have already moved for leave to file a separate brief in light of the special considerations raised by their status as members of Congress, CMOC understands D.C. Circuit Rule 29(d) ordinarily to contemplate consideration of the appropriateness of separate briefing at the time a proposed amicus brief is actually submitted under the requirements of Federal Rule of Appellate Procedure 29(b) and 29(e). CMOC therefore respectfully requests direction from the Court if it should file a motion to substantiate separate briefing before the Federal Rule 29(e) deadline. Alternatively, CMOC requests that this filing be treated as such a motion if doing so is deemed appropriate by the Court. In either event, CMOC respectfully requests that this filing be directed to any single judge or panel that may currently be considering the motion of Senators Levin et al. for possible resolution of CMOC's permission to file a separate brief in conjunction with the resolution of that motion.

Based on the foregoing, CMOC respectfully requests that this Court grant it leave to participate as an amicus curiae in this appeal and, if appropriate to resolve the issue at this time, that this Court grant CMOC leave to file its brief separately from those submitted by other amici in support of CFTC.

Respectfully submitted,

/s/ Kenneth D. Sansom

Kenneth D. Sansom

Attorney for Amicus Curiae

Commodity Markets Oversight

Coalition

Kenneth D. Sansom

Jess R. Nix

APPLICATIONS FOR ADMISSION FILED AND PENDING

SPOTSWOOD SANSOM &

SANSBURY LLC

One Federal Place

1819 Fifth Avenue North

Suite 1050

Birmingham, Alabama 35203

Phone: 205-986-3620

Fax: 205-986-3639

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of March, 2013, I caused a true and correct copy of the foregoing Motion of Commodity Markets Oversight Coalition for Leave to Participate as Amicus Curiae, and Addenda attached thereto, to be filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the Court's CM/ECF system. Service was made on the following counsel using the CM/ECF system:

Jonathan L. Marcus

jmarcus@cftc.gov

Lawrence DeMille-Wagman

lwagman@cftc.gov

Mary T. Connelly

mconnelly@cftc.gov

Ajay B. Sutaria

asutaria@cftc.gov

COMMODITY FUTURES TRADING COMMISSION

1155 21st Street, N.W.

Washington, D.C. 20581

Leon Dayan

ldayan@bredhoff.com

Bredhoff & Kaiser, P.L.L.C.

805 Fifteenth St., N.W., Suite 1000

Washington, D.C. 20005

Miguel A. Estrada

MEstrada@gibsondunn.com

Eugene Scalia

EScalia@gibsondunn.com

Jason J. Mendro

JMendro@gibsondunn.com

Gibson, Dunn & Crutcher LLP

1050 Connecticut Ave., N.W.

Washington, D.C. 20036

/s/ Kenneth D. Sansom

Kenneth D. Sansom

Commodity Markets Oversight Coalition

Respectfully submitted,

/s/ Kenneth D. Sansom

Kenneth D. Sansom

Attorney for Amicus Curiae

*Commodity Markets Oversight
Coalition*

Kenneth D. Sansom

Jess R. Nix

APPLICATIONS FOR ADMISSION FILED AND PENDING

SPOTSWOOD SANSOM &

SANSBURY LLC

One Federal Place

1819 Fifth Avenue North

Suite 1050

Birmingham, Alabama 35203

Phone: 205-986-3620

Fax: 205-986-3639

increasingly unpredictable and volatile commodities future markets, and out of concern over apparently excessive speculation in those markets. Its membership has increased substantially since then. Although not required by D.C. Circuit Rules 26.1 or 28(a)(1)(A), a list of those members of CMOC presently anticipated to join in CMOC's participation in this appeal may be found attached as Addendum C to CMOC's Motion for Leave to Participate as Amicus Curiae. Additional participants are anticipated, and CMOC will submit an updated list to the Court once it knows those additional participants.

CMOC exists to promote its members interests in legislative, regulatory, and litigation matters related to the commodities markets because its members rely on functional, transparent, and competitive commodity derivatives markets as a hedging and price discovery tool.⁴ CMOC therefore advocates in favor of government policies that promote stability and confidence in the commodities markets; that seek to prevent fraud, manipulation and excessive speculation; and that preserve the interests of bona fide hedgers and consumers.

CMOC states that it is uncertain whether it is a "trade association," as that term is defined in D.C. Cir. Rule 26.1(b). *See id.* ("For purposes of this rule, a

⁴ Hedging is an investment strategy whereby one attempts to offset the risk of loss in one investment through a second investment. Price discovery is the basic method for determining the price of a specific commodity in the market based on interactions between buyers and sellers. *See Staff Report, U.S. Permanent Subcommittee on Investigations, Excessive Speculation in the Wheat Market, S. HRG. 111-155 (July 21, 2009) at 2, 54.*

‘trade association’ is a continuing association of numerous organizations or individuals operated for the purpose of promoting the general commercial, professional, legislative, or other interests of the membership.”). CMOC is unincorporated and nonprofit, and neither its members nor any parent or publicly-held company have an ownership interest in it. Pursuant to D.C. Cir. Rule 26.1(b), CMOC represents that no members of CMOC have issued shares or debt securities to the public.

Respectfully submitted,

/s/ Kenneth D. Sansom
Kenneth D. Sansom
Attorney for Amicus Curiae
Commodity Markets Oversight
Coalition

Kenneth D. Sansom
Jess R. Nix
APPLICATIONS FOR ADMISSION FILED AND PENDING
SPOTSWOOD SANSOM &
SANSBURY LLC
One Federal Place
1819 Fifth Avenue North
Suite 1050
Birmingham, Alabama 35203
Phone: 205-986-3620
Fax: 205-986-3639

ADDENDUM C

Airlines for America
American Bakers Association
American Feed Industry Association
American Public Gas Association
American Trucking Associations
California Independent Oil Marketers Association
Connecticut Energy Marketers Association
Empire State Petroleum Association
Fuel Merchants Association of New Jersey
Gasoline and Automotive Service Dealers of America
Industrial Energy Consumers of America
Maine Energy Marketers Association
Massachusetts Oilheat Council
NAFA Fleet Management Association
National Association of Convenience Stores
National Association of Shell Marketers
National Family Farm Coalition
National Farmers Union
National Grange
National Latino Farmers & Ranchers Trade Association
New England Fuel Institute
New York Oil Heating Association
Oil Heat Council of New Hampshire
Oilheat Council of Long Island
Oilheat Institute of Rhode Island
Petroleum Marketers Association of America
Rancher-Cattlemen Action Legal Fund (R-CALF) USA
Vermont Fuel Dealers Association