

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 21-2726

Caption [use short title]

Motion for: Extension of time to file response

Set forth below precise, complete statement of relief sought:

Extension of time until July 18, 2023 for the Securities and Exchange Commission to respond to the Court's order soliciting its views, and an extension of time until August 31, 2023 for parties to file a response.

Kirschner v. JP Morgan Chase Bank, N.A.

MOVING PARTY: Securities and Exchange Commission (amicus curiae)

OPPOSING PARTY:

☐ Plaintiff

☐ Defendant

☐ Appellant/Petitioner

☐ Appellee/Respondent

MOVING ATTORNEY: John R. Rady

OPPOSING ATTORNEY:

[name of attorney, with firm, address, phone number and e-mail]

Securities and Exchange Commission

100 F Street, N.E., Washington, D.C. 20549

202-551-4997 radyjo@sec.gov

Court- Judge/ Agency appealed from: Southern District of New York (Gardephe, J.)

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes

☐ No (explain):

Opposing counsel's position on motion:

☒ Unopposed

☐ Opposed

☐ Don't Know

Does opposing counsel intend to file a response:

☐ Yes

☒ No

☐ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below?

☐ Yes

☐ No

Has this relief been previously sought in this court?

☐ Yes

☐ No

Requested return date and explanation of emergency:

Is oral argument on motion requested?

☐ Yes

☒ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☒ Yes

☐ No

If yes, enter date: Oral argument occurred on March 9, 2023

Signature of Moving Attorney:

/s/ John R. Rady

Date: 6/30/2023

Service by: ☒ CM/ECF

☐ Other [Attach proof of service]

21-2726

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

MARC S. KIRSCHNER, solely in his capacity as
Trustee of the Millennium Lender Claim Trust,

Plaintiff-Appellant,

v.

JP MORGAN CHASE BANK, N.A., JP MORGAN SECURITIES LLC,
CITIBANK, N.A., BANK OF MONTREAL, BMO CAPITAL MARKETS
CORP., SUNTRUST ROBINSON HUMPHREY, INC., SUNTRUST BANK,
CITIGROUP GLOBAL MARKETS INC.,

Defendants-Appellees,

CITIBANK GLOBAL MARKETS INC.,

Defendant.

On Appeal from the United States District Court
for the Southern District of New York, 17-cv-6334 (Hon. Paul G. Gardephe)

**UNOPPOSED MOTION FOR A 7-DAY EXTENSION OF TIME
TO RESPOND TO THE COURT'S ORDER SOLICITING THE VIEWS OF
THE SECURITIES AND EXCHANGE COMMISSION**

The Securities and Exchange Commission (“Commission”) respectfully requests a 7-day extension of time until July 18, 2023, to file a response to the Court’s order requesting the Commission’s views on what the Court recognized is an important issue with numerous policy implications. The Commission previously requested an extension of the Court’s initial 28-day deadline until June 27, 2023, and then requested another 14-day extension until July 11, 2023, in view of the need to carefully review these complex issues; consult with the Office of the Solicitor General, other federal agencies, the parties, as well as Commission staff; and seek authorization to file any response through a vote by a majority of Commissioners. Dkts. 179, 195. The Court granted these extensions. Dkt. 183, 199.

Since the Court’s June 14, 2023 order granting the Commission until July 11, 2023 to file a response, Commission counsel have continued to coordinate with other Commission staff members in relevant divisions to determine the appropriate response to the Court’s question that should be submitted to the Commission for its consideration and approval. Commission staff may not file an *amicus* brief without approval by a majority of Commissioners, and the additional seven-day extension will allow for adequate time for Commission review and approval. The Commission does not anticipate needing to request any additional extensions of time.

The Commission therefore respectfully requests an extension of time until July 18, 2023, to file an *amicus* brief setting forth its views on the Court's question. Counsel for all parties have informed the Commission that they do not oppose this request, provided the Court likewise extend their time to August 31, 2023, to file responses to the Commission's submission. The Commission consents to this additional relief.

Respectfully submitted,

MEGAN BARBERO
General Counsel

DAVID D. LISITZA
Senior Appellate Counsel

MICHAEL A. CONLEY
Solicitor

/s/ John R. Rady
JOHN R. RADY
Appellate Counsel

DOMINICK V. FREDA
Assistant General Counsel

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June 30, 2023

CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 285 words, excluding the parts exempted by Rule 32(f).

I also certify that this motion complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E), 32(a)(5), and 32(a)(6) because it has been prepared in a proportionally spaced, Roman-style, 14-point typeface.

/s/ John R. Rady
John R. Rady