



UNITED STATES  
**SECURITIES AND EXCHANGE COMMISSION**  
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July 18, 2023

Catherine O'Hagan Wolfe  
Clerk of Court  
U.S. Court of Appeals for the Second Circuit  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

Re: *Kirschner v. JP Morgan Chase Bank, N.A.*, No. 21-2726

Dear Ms. Wolfe:

On March 16, 2023, following oral argument in the above-referenced appeal, the Court issued an order soliciting the Securities and Exchange Commission's views on whether "the syndicated term loan notes at issue in this appeal are securities under *Reves v. Ernst & Young*, 494 U.S. 56 (1990)." Dkt. 170. As the Court acknowledged in its order, the Court "ha[s] not previously considered whether this type of note is a security." *Id.*

At the Commission's request, the Court extended the time for the Commission to file such a brief until today, July 18, 2023. Dkt. 204. Despite diligent efforts to respond to the Court's order and provide the Commission's views, the staff is unfortunately not in a position to file a brief on behalf of the Commission in this matter. We greatly appreciate the Court's indulgence and regret any inconvenience this may have caused the Court or the parties.

Sincerely,

*Megan Barbero*

Megan Barbero  
General Counsel  
Securities and Exchange Commission

cc: Counsel for all participants (service via CM/ECF)