

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 June 27, 2023 to respond to the Court's order soliciting the views of the Securities and Exchange Commission

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):

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

Has this request for relief been made below? Has this relief been previously sought in this court? Requested return date and explanation of emergency:

Opposing counsel's position on motion: Unopposed Opposed Don't Know

Does opposing counsel intend to file a response: Yes No Don't Know

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: 3-27-2023

Service by: CM/ECF Other [Attach proof of service]

# 21-2726

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

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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.

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

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

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The Securities and Exchange Commission (“Commission”) respectfully requests an extension of time until June 27, 2023, to file a response to the Court’s order requesting the Commission’s views.

On March 16, 2023, after oral argument, the Court issued an order requesting the 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). *See* Dkt. 170 (order); *see also* Dkt. 171 (letter notifying the Commission’s General Counsel); Dkt. 172 (letter notifying the Solicitor General). The Court requested a response by April 13, 2023.

As the Court’s order notes, this is an important issue and the Commission has an interest in ensuring that its views on this issue are considered by the Court in its resolution of this appeal. However, it is not possible for the Commission to prepare a response by April 13. Commission counsel have met with Malcolm Stewart, Deputy Solicitor General, who agrees that this issue warrants consultation with other federal agencies. Commission counsel will also need to consult with counsel for the parties, as well as internally, before recommending a response. And the Commission itself needs to consider the recommended response.

The Commission therefore requests an extension until June 27, 2023, to respond to the Court’s order. Counsel for all parties have informed the Commission that they do not oppose this request.

Respectfully submitted,

MICHAEL A. CONLEY  
Solicitor

DOMINICK V. FREDA  
Assistant General Counsel

DAVID D. LISITZA  
Senior Appellate Counsel

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

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March 27, 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 230 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