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May 26, 2023

Via CM/ECF

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. JPMorgan Chase Bank, N.A.*, No. 21-2726

Dear Ms. Wolfe:

The Court heard oral argument in this case on March 9. After argument, the Court issued an order soliciting the views of the Securities and Exchange Commission on whether the syndicated term loan at issue is a security. *See* ECF No. 170. The primary federal agencies that oversee the syndicated loan market are the Office of the Comptroller of the Currency (OCC); the OCC's parent agency, the Department of the Treasury; the Federal Deposit Insurance Corporation (FDIC); and the Board of Governors of the Federal Reserve System. The perspective of those regulators has been important in past cases, *see Reves v. Ernst & Young*, 494 U.S. 56, 67 (1990); *Banco Espanol de Credito v. Security Pac. Nat'l Bank*, 973 F.2d 51, 55 (2d Cir. 1992), and it could be of material assistance to the Court here given those regulators' familiarity with the syndicated loan market.

The appellees thus respectfully submit that the Court should consider soliciting the views of the other relevant agencies—the OCC, Treasury Department, FDIC, and Federal Reserve—in a letter brief, whether filed by each agency or jointly, due the same day as the Commission's submission. The parties could then respond to the agencies' views and the SEC's brief in a single submission. Proceeding in that way would not further delay this appeal, and could be of material assistance to the Court.

Catherine O'Hagan Wolfe

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Sincerely,

/s/ Jeffrey B. Wall
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CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2023, I electronically filed the foregoing letter with the Clerk of Court using the CM/ECF system. I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished through the CM/ECF system.

/s/ Jeffrey B. Wall
Jeffrey B. Wall

May 26, 2023