

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 11, 2023 for the Securities and Exchange Commission to respond to the Court's order soliciting its views, and an extension of time until August 24, 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):

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: 6/13/2023

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 A 14-DAY 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 a 14-day extension of time until July 11, 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, on March 27, 2023, an extension of the Court’s initial 28-day deadline until June 27, 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. Dkt. 179. The Court granted this extension. Dkt. 183.

Since the Court issued its order soliciting the Commission’s views, Commission staff have reviewed the record in this case and studied the legal issues, consulted with the Office of the Solicitor General and other interested federal agencies, met with counsel for the parties in this case, and coordinated with 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. Despite working diligently and making significant progress, Commission staff does not anticipate being able to conclude those ongoing consultations and finalize its recommendations with adequate time for the necessary Commission review and approval prior to the current June 27 deadline.

And Commission staff may not file an *amicus* brief without approval by a majority of Commissioners.

The Commission therefore respectfully requests an extension of time until July 11, 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 24, 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  
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June 13, 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 313 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