

SEC Declines to Submit Amicus Brief Regarding Status of Syndicated Term Loans as Securities

July 19, 2023

On July 18, the Securities and Exchange Commission declined to file a highly anticipated amicus brief with the Second Circuit expressing its views as to whether a syndicated term loan qualifies as a “security.”

In 2020, in *Kirschner v. JP Morgan*,¹ the Southern District of New York dismissed Blue Sky and common law securities claims brought by a trustee on behalf of lenders and purchasers involved in a term loan B transaction. Looking to the *Reves*² test, the Southern District found that the loan in question did not meet the definition of a security.³³ On appeal to the Second Circuit, plaintiffs now argue that the Southern District erroneously ignored the *Reves* presumption that a note is considered a security unless it bears a “family resemblance” to one of the established categories of exceptions.

A Second Circuit panel heard oral arguments from the parties in March of 2023 and subsequently requested that the SEC provide its viewpoint on the issue. After a series of extensions, the staff of the SEC notified the Second Circuit that it is “not in a position to file a brief ... in this matter.” The Second Circuit’s ruling, expected later this year, could have wide ranging effects on the financial sector and global markets if it overturns the Southern District of New York’s 2020 decision.

Please do not hesitate to contact us with any questions.



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¹ *Kirschner v. JPMorgan Chase Bank*, 2020 WL 2614765 (S.D.N.Y. May 22, 2020).

² *Reves v. Ernst & Young*, 494 U.S. 56 (1990).

³ *Kirschner*, 2020 WL 2614765, *17.



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