

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

INTERNATIONAL SWAPS AND
DERIVATIVES ASSOCIATION, INC. and
SECURITIES INDUSTRY AND
FINANCIAL MARKETS ASSOCIATION,

Plaintiffs,

v.

UNITED STATES COMMODITY FUTURES
TRADING COMMISSION,

Defendant.

Civil Action No. 11-CV-2146 (RLW)

**PLAINTIFFS' MOTION FOR LEAVE TO RESPOND TO BETTER MARKETS'
AMICUS CURIAE BRIEF**

Plaintiffs International Swaps and Derivatives Association, Inc. and Securities Industry and Financial Markets Association hereby seek leave to respond to the *amicus curiae* brief filed by Better Markets, Inc. on April 20, 2012. *See* Br. of *Amicus Curiae*, Dkt. 50 (Apr. 24, 2012). Because Better Markets did not file its motion for leave to submit its *amicus curiae* brief until one business day before Plaintiffs' reply brief was due, Plaintiffs did not have a meaningful opportunity to respond to Better Markets' arguments. Moreover, Better Markets' brief is 33 pages in length, well in excess of the length ordinarily permitted under the Federal Rules of Appellate Procedure. *See* Fed. R. App. P. 29(d) ("Except by the court's permission, an *amicus* brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief."). Plaintiffs accordingly advised Better Markets that they would oppose its

filing.¹

Leave to respond is warranted here because it will enable Plaintiffs to address erroneous legal arguments related to the proper interpretation of Section 19(a) of the Commodity Exchange Act, including Better Markets' mischaracterization of a Supreme Court dissent as a majority opinion. Plaintiffs conferred with Defendant Commodity Futures Trading Commission about this motion and Defendant stated that it opposed the filing.² The proposed response, which is five pages in length, is attached to this motion and would in no way delay this litigation.

Dated: April 27, 2012

Respectfully submitted,

/s/ Miguel A. Estrada

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¹ Plaintiffs did not oppose the filing of briefs by Defendant's other *amici* and instead responded to their arguments in their summary-judgment reply brief to ensure that briefing of the case would not be delayed.

² The Commission stated that it would consent to this filing only if Plaintiffs agreed to an additional seven days for the Commission to file its reply brief in support of its cross-motion for summary judgment (doubling the period permitted under the rules).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of April, 2012, I filed the foregoing Motion for Leave to Respond to Better Markets' *Amicus Curiae* Brief with the Clerk of Court for the United States District Court for the District of Columbia using the Court's CM/ECF system. I also caused the motion to be served by United Parcel Service on the following:

Stephen W. Hall
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/s/ Jason J. Mendro

Jason J. Mendro