

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

STARR INTERNATIONAL  
COMPANY, INC., in its own right and  
on behalf of two classes of others  
similarly situated,

*Plaintiff-Appellant/Cross-Appellee,*

v.

UNITED STATES OF AMERICA,

*Defendant-Appellee/Cross-Appellant,*

AMERICAN INTERNATIONAL  
GROUP, INC.,

*Defendant-Appellee.*

Case Nos. 2015-5103, -5133

**MOTION OF BETTER MARKETS, INC., FOR LEAVE TO FILE AN  
AMICUS CURIAE BRIEF IN SUPPORT OF THE UNITED STATES**

Under Rule 29(e) of the Federal Rules of Appellate Procedure, Better Markets, Inc. (“Better Markets”) respectfully moves this Court for leave to file the accompanying amicus curiae brief in support of the United States of America, the defendant-appellee and cross-appellant in this action. This motion is partially unopposed. In support of this motion, counsel for Better Markets states as follows:

(1) Better Markets has a strong interest in this case.

(2) Better Markets can assist the Court by providing helpful analysis on several important issues presented in these appeals.

(3) No party will be prejudiced by permitting Better Markets to file its amicus brief.

(4) The accompanying brief is timely and conforms to the word limit imposed under Rule 29 of the Federal Rules of Appellate Procedure.

(5) The government has consented to the filing of an amicus brief, but counsel for Starr International Company indicated that Starr will oppose this motion.

### ARGUMENT

- I. Better Markets has a strong and demonstrable interest in this case, as contemplated by Rule 29(b)(1) of the Federal Rules of Appellate Procedure.

Better Markets is a nonprofit organization dedicated to promoting the public interest in the financial markets. It advocates for greater transparency, accountability, and oversight in the financial system through a variety of activities, including comment letters on agency rules, public advocacy, litigation, and independent research. Better Markets appears regularly as amicus in the federal Courts of Appeals. One of Better Markets' core objectives is the establishment of a legal and regulatory framework that is capable of preventing another crisis like the one that the country suffered in 2008.

Better Markets has an interest in this case for three reasons. First, it poses a direct threat to the public interest in the form of a multi-billion dollar “exaction” against the taxpayer, on top of the unlimited liability for AIG’s private debts assumed during the crisis and the hundreds of billions in actual bailouts. Better Markets has an interest in the government’s resources and their allocation, and seeks to assure that adequate funds are appropriated, especially for underfunded regulators and government-agency watchdogs, whose lack of resources facilitated lawlessness and recklessness on Wall Street in the years leading up to the crisis. If Starr were to prevail, Better Markets’ interests in the adequate funding of these critical government agencies would be harmed.

Second, any ruling that validates Starr’s claims would only exacerbate moral hazard. The lesson for the financial system would be this: Under extraordinary circumstances, the owners of the largest financial institutions—even the most reckless—stand to receive not only a generous taxpayer bailout but also the opportunity later to bite the hand that fed it, by challenging the terms of the rescue and seeking damages for the government’s lifesaving intervention. This will surely undermine the already weak-to-nonexistent sense of accountability on Wall Street. And it may lead the government to inaction in the next crisis, which could prove devastating to the economy, as the bankruptcy of Lehman Brothers Holdings, Inc. demonstrated.

Finally and most importantly, the trial court's misconstruction of the Federal Reserve Act may have far-reaching consequences for regulators when they confront new and unforeseen exigent circumstances. When any statutory scheme is put to the ultimate test under the direst circumstances—precisely what the Federal Reserve confronted in 2008—regulators need and deserve deference in interpreting and applying the tools at their disposal for preventing a complete collapse of the financial system. If the trial court's cabined reading of the Federal Reserve Act stands, this regulatory flexibility will be in peril. The consequences are plain to foresee: In the face of another financial crisis, policymakers will be reluctant to act given after-the-fact second-guessing, which may prevent necessary action to save the economy.

Congressional reforms like Dodd-Frank did much to prevent the last crisis and reasonably imaginable crises from recurring, but we do not know what the next crisis will look like. Moreover, some of the provisions at issue, notably the incidental-powers provision of the Federal Reserve Act, remain fully intact as an important tool for regulators to deploy if and when another crisis besets our country. An unduly narrow interpretation of this authority will inevitably limit regulators' ability to protect the country when that power is most necessary.

The resolution of this appeal may significantly affect the public interest in important ways that go beyond the government's compelling yet narrower interest

in protecting taxpayer money. Accordingly, the interests of Better Markets are not fully represented by the existing parties' briefs, and Better Markets' brief brings a unique perspective to the appeal.

II. Better Markets can assist the Court.

Leave to file an amicus brief is to be freely given when the amicus will aid the Court "by presenting ideas, arguments, theories, insights, facts or data that are not to be found in the parties' briefs." *Voices for Choices v. Illinois Bell Telephone Co.*, 339 F.3d 542, 545 (7th Cir. 2003); *see also Youming Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 137 (D.D.C. 2008) (courts typically grant leave to file an amicus brief "when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.") (citing *Ryan v. Commodity Futures Trading Comm'n*, 125 F. 3d 1062, 1064 (7th Cir. 1997)). The accompanying amicus brief satisfies this standard, as it will prove helpful to the Court in a number of ways. It is substantive, concise, thoroughly researched and cited, and it offers distinct legal arguments not advanced by either party.

First, Better Markets argues that, if the Federal Reserve Act is ambiguous, the Federal Reserve merits deference for its interpretation of the Act under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). Second, Better Markets demonstrates with math that the claims of the Reverse Stock Split class are without

merit because, while the government could have converted its preferred shares to common shares with as little as a 3:1 reverse split, a 20:1 reverse split was necessary to ensure that AIG was not delisted by the New York Stock Exchange in light of the fact that AIG's stock had fallen 98% in the preceding fifteen months. Third and finally, Better Markets challenges a particular factual finding of the district court: that AIG was less culpable but received harsher treatment from the government than other firms. This finding is clearly erroneous both because it is demonstrably untrue and because it exceeds Article III jurisdiction as a factual finding that bears no relationship to the legal merits of Starr's causes of action. Each of the foregoing arguments provides an important and independent way for the Court to resolve issues presented in this appeal.

Moreover, the accompanying brief is not a mere recitation of the arguments presented by the government. For example, Better Markets does not join the government's arguments that Starr's claims are purely derivative and belong only to AIG or that Starr lacks a cause of action under the Federal Reserve Act. And where Better Markets joins one of the government's arguments in full, it does so with brevity, as in the section of the proposed brief joining the government's argument on the "rough proportionality" doctrine, which comprises only one paragraph in the proposed brief.

Finally, beyond its unique legal arguments, Better Markets also points to important historical facts, largely omitted from the parties' briefing, about the course of events that led up to the crisis in which the loan was extended. Without these facts, it is impossible for the conduct of the parties to be considered in the proper context in which the decisions were made.

The Court should not be deprived of these important arguments and facts just because Starr does not agree with them. Whether or not they ultimately prove to be the grounds on which the Court relies, they are substantive, relate directly to the merits of this appeal, and deserve consideration.

III. No party faces any prejudice from the filing of this brief.

The filing of this brief will cause no delay or any other prejudice to any party. Starr may engage with Better Markets' arguments in its response and reply brief, which is authorized to contain 17,000 words under Rule 28.1(e)(2)(A) of the Federal Rules of Appellate Procedure, as amended by the Court's order granting an additional 3,000 words to both parties.

IV. The brief conforms with Rule 29 of the Federal Rules of Appellate Procedure.

The attached brief contains 6,970 words and is filed concurrently with this motion, as permitted by the Court's order of December 14, 2015. *See* Dkt. No. 68.

V. The government consents to the filing of this brief.

Before filing this motion, Better Markets sought the consent of all parties. Although counsel for Starr indicated that Starr will oppose this motion, the government has authorized Better Markets to represent that the government consents to the filing of the amicus brief. Better Markets informed counsel for AIG of this motion, as a courtesy, because AIG is no longer participating in the appeal. *See* Dkt. No. 50 (Oct. 8, 2015). Counsel for AIG authorized Better Markets to state that AIG takes no position on this motion because it is no longer a party to this case.

**CONCLUSION**

For the foregoing reasons, Better Markets requests that the Court grant this motion and accept the accompanying amicus brief for filing.

Respectfully submitted,

Dated: December 15, 2015

/s/ Dennis M. Kelleher

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### CERTIFICATE OF INTEREST

Better Markets, Inc. ("Better Markets") is a nonprofit corporation. Counsel for Better Markets certifies the following:

1. The full name of every party or amicus curiae represented by me is: Better Markets, Inc.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: Not applicable.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are: None.

4. The names of all attorneys that appeared for the party or amicus curiae now represented by me in the trial court or agency or are expected to appear in this Court are: Dennis M. Kelleher.

Dated: December 15, 2015

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### CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December 2015, I caused the foregoing motion to be filed with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit using the appellate CM/ECF system. Counsel for all parties and amici are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: December 15, 2015

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