

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

U.S. SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff-Appellant-Cross Appellee,

v.

CITIGROUP GLOBAL MARKETS
INC.,

Defendant-Appellee-Cross Appellant.

Case Nos. 11-5227 (Lead)
11-5242 (XAP)
11-5375 (Con.)

**RESPONSE OF BETTER MARKETS, INC.
TO CITIGROUP GLOBAL MARKETS INC.'S MOTION TO FILE AN
OVERSIZED REPLY BRIEF**

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Dated: September 4, 2012

Better Markets, Inc. (“Better Markets”) respectfully submits this Response to the motion of Citigroup Global Markets Inc. (“Citigroup”) to file an oversized reply brief (“Citigroup Motion”). The purpose of this Response is simply to bring to the Court’s attention certain facts that are relevant to Citigroup’s Motion, but which were not included in Citigroup’s filings.

On August 30, 2012, Citigroup filed its motion requesting leave to file a reply brief 50% larger than permitted under the rules (*i.e.*, 10,500 words rather than 7,000). Citigroup cited as its justification “the length of the brief by Pro Bono Counsel, as well as the length of the *amicus curiae* briefs” in support of Pro Bono Counsel. Mem. at 3.

However, Citigroup made no mention of (1) the *amicus curiae* briefs submitted in support of both Citigroup and the SEC or (2) the length of the SEC’s brief, even though the SEC’s brief fully supports Citigroup’s position. A full accounting of the briefing – the justification upon which Citigroup chose to base its motion – by or in support of the SEC and Citigroup reveals:

- The mutually supportive opening briefs of the SEC and Citigroup, which have a combined length of 27,456 words;
- The *amicus curiae* briefs filed in support of the SEC and Citigroup, which have a combined length of 21,066 words; and

- The two replies by the SEC and Citigroup, which under Federal Rule of Appellate Procedure 32(a)(7), may each contain up to 7,000 words.

Thus, even without the benefit of a 50% increase in the size of Citigroup's reply brief, Citigroup and the SEC will have up to 62,522 words before the Court to support their arguments seeking reversal of the District Court's decision. In contrast, there are 52,039 words that advocate for upholding the District Court's decision. (The brief filed by appointed Pro Bono Counsel on July 27, 2012 contained 19,969 words, and the *amicus curiae* briefs filed in support of Pro Bono Counsel have a combined length of 32,070 words.)

Better Markets takes no position on Citigroup's Motion, but believes the Court should have the benefit of all the relevant facts when considering that motion.

CONCLUSION

Better Markets submits the foregoing facts to assist the Court in ruling on Citigroup's motion for leave to file an oversized reply brief.

Dated: September 4, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2012, I caused the foregoing Response to be filed via the ECF electronic filing system, and sent by email to each of the parties, as follows:

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