

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KalshiEx LLC,

Plaintiff,

v.

Commodity Futures Trading Commission,

Defendant.

No. 1:23-cv-03257-JMC

**UNOPPOSED MOTION FOR
LEAVE TO FILE BRIEF AS
AMICUS CURIAE IN
SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

Jeremy D. Weinstein respectfully moves this Court for an order permitting him to file a brief as *amicus curiae* in support of the Plaintiff's motion for summary judgment. The proposed *amicus* brief and a proposed order accompany this motion. The parties do not oppose this motion.

Mr. Weinstein is a private energy commodities law transactional and regulatory attorney. He has long been interested in seeking transparency for the law regarding commodities, especially when it comes to the opaque rulemaking often engaged in by the Commodity Futures Trading Commission (CFTC), so that energy companies can enjoy the benefits of being able to comply with tractable law and regulation. *Amicus* has contributed to the literature and scholarship on issues in commodity law regulation, including writing articles and submitting comments in federal and state rulemakings. *See, e.g.*, Jeremy D. Weinstein, *Football Gambling Futures Contracts: Can the CFTC Measure Up to the Keystone Cops?*, 41 *Futures and Derivatives L. Rep.* (Jul./Aug. 2021); Jeremy D. Weinstein, *CFTC Regulation of Trade Options: Unfinished Project KISS Business*, 39 *Futures and Derivatives L. Rep.* (Nov. 2019); Jeremy D. Weinstein, *Unmasked: FirstEnergy Bankruptcy Decision Reveals*

Deception at the Core of the ISDA 2018 ISDA Resolution Stay Protocol, 39 *Futures and Derivatives L. Rep.* (Jan. 2019); Jeremy D. Weinstein, *Risks Have Been Transferred from Banks to Companies*, *Financial Times* (Mar. 1, 2018); and Jeremy D. Weinstein, *Quicksand In the Hedges*, 31 *Futures and Derivatives L. Rep.* (Nov. 2011).

The proposed brief highlights adverse consequences that arise from aspects of the CFTC’s position here. The brief also highlights some evidence in the record that underscores the arbitrariness and capriciousness of the CFTC’s action. The proposed brief supplements—and does not duplicate—Plaintiff’s arguments, and the Court would benefit from its additional analysis.

Courts regularly grant leave to file such *amicus* briefs. “If an *amicus* brief that turns out to be unhelpful is filed, the [Court], after studying the case,” can “simply disregard” it. *Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 133 (3d Cir. 2002) (Alito, J.). “On the other hand, if a good brief is rejected, the [Court] will be deprived of a resource that might have been of assistance.” *Id.* Presumably for this reason, “[e]ven when the other side refuses to consent to an *amicus* filing,” most courts “freely grant leave to file, provided the brief is timely and well-reasoned.” *Id.* (quoting Michael E. Tigar & Jane B. Tigar, *Federal Appeals—Jurisdiction & Practice* 181 (3d ed. 1999)); see, e.g., *Mass. Food Ass’n v. Mass. Alcoholic Beverages Control Comm’n*, 197 F.3d 560, 567 (1st Cir. 1999) (“[A] court is usually delighted to hear additional arguments from able amici that will help the court toward right answers.”); *Lefebure v. D’Aquila*, 15 F.4th 670, 675 (5th Cir. 2021) (“[C]ourts should welcome *amicus* briefs for one simple reason: ‘[I]t is for the honour of a court of justice to avoid error in their judgments.’”).

For these reasons, proposed *amicus* respectfully requests an order from this Court directing that the attached brief be filed.

Respectfully submitted,

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