

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

MARKET SYNERGY GROUP, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
LABOR, THOMAS E. PEREZ, in his official
capacity as Secretary of the United States
Department of Labor, and PHYLLIS C. BORZI,
in her official capacity as Assistant Secretary of
the United States Department of Labor,

Defendants,

Civil Action No. 16-cv-4083

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION OF PUBLIC
INVESTOR ARBITRATION BAR ASSOCIATION FOR LEAVE TO FILE A BRIEF
AMICI CURIAE IN SUPPORT OF THE DEFENDANTS**

Pursuant to rule 6.1(d)(1) of the Rules of Practice of United States District Court for the District of Kansas, Public Investors Arbitrations Bar Association (“PIABA”) hereby submits this reply memorandum of law in further support of its motion for leave to file a brief *amici curiae* in support of the defendants, the United States Department of Labor (“DOL”) and two of its officials, Secretary Thomas E. Perez and Assistant Secretary Phyllis C. Borzi. *See* Mot., ECF No. 30 (July 27, 2016); Mem. of Law in Supp. of Mot., ECF No. 30-1 (July 27, 2016). The plaintiff in this action, Market Synergy Group, Inc., filed an omnibus opposition to this motion (as well as to other *amici*). *See* Pl.’s Opp’n, ECF No. 37 (Aug. 5, 2016).

ARGUMENT

In the interest of judicial efficiency, PIABA adopts the arguments made in the Reply Memorandum of Law in Further Support of Motion of Better Markets, Inc., Consumer Federation of America, and Americans for Financial Reform for Leave to file a Brief Amici Curiae in Support of the Defendants. *See* ECF No. 38, Aug. 9, 2016.

PIABA wishes to make the additional following points in support of allowing the filing of its proposed amicus brief. The proposed brief provides helpful argument that is different from the defendants' brief, both quantitatively and qualitatively. First, as a quantitative matter, none of the cases cited in PIABA's proposed brief were cited in the defendants' brief. Further, three of the statutes, five of the regulations, and fifteen of the other authorities cited by PIABA do not appear in the defendants' brief. Clearly, PIABA's proposed brief does not duplicate the efforts of the defendants, and it brings to the Court's attention a number of new and important authorities to be considered in resolving the arguments made by the parties.

Second, PIABA's proposed brief is qualitatively different from the defendants' brief. Specifically, in the proposed brief, PIABA:

- Details the overlapping standards governing the provision of investment advice, *See* Proposed Brief, pp. 4-7;
- Explains that investors are confused by the current differing standards, *See* Proposed Brief, pp. 7-9;
- Shows how the confusion about the different standards causes significant harm to investors, *See* Proposed Brief, pp. 9-11; and
- Explains that the DOL had the authority to issue the rule with the current exceptions, *See* Proposed Brief, pp. 11-16.

These facts and arguments do not repeat the issues addressed by the defendants' brief. Instead, the proposed brief provides additional authorities and a more complete factual picture

that will prove useful to the Court. In addition, the proposed brief provides important arguments that show that the DOL acted within its authority when making this rule.

Finally, the proposed brief also provides this Court with the unique perspective of advocates for those investors who have been harmed by investment professionals. In other words, the brief addresses the public interest in this rule. Hearing the prospective of advocates who have seen first-hand the devastation that conflicted advice can cause investors will aid the Court in understanding the equities at stake.

CONCLUSION

Whatever decision the Court makes about further submissions is well within its discretion, but denial of leave to file PIABA's proposed brief serves no purpose other than to keep this Court from considering a useful brief filed by an organization with a unique perspective that is intimately familiar with the subject matter of this case. For the reasons articulated in the Reply brief filed by other *amici* (ECF No. 38, Aug. 9, 2016) and for all the reasons listed above, this Court should grant the motion for leave to file PIABA's proposed brief.

DATED: August 19, 2016

Respectfully submitted,

By: /s/ Diane A. Nygaard

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CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2016, I filed and served the foregoing Reply Memorandum of Law in Further Support of Motion for Leave to File a Brief *Amici Curiae* with the Clerk of the Court by causing a copy to be electronically filed via the CM/ECF system. In accordance with the Rule 5.4.9(a) of the United States District Court for the District of Kansas, electronically filing a document operates to effect service of the document on all counsel who have consented to electronic service, as all counsel have in this case.

DATED: August 19, 2016

Respectfully submitted,

By: /s/ Diane A. Nygaard

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