

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

)	
IN RE SECURITIES AND EXCHANGE COMMISSION,)	5375
)	No. 11-_____
Petitioner,)	
)	

**SECURITIES AND EXCHANGE COMMISSION’S
PETITION FOR A WRIT OF MANDAMUS**

The Securities and Exchange Commission (Commission) petitions for a writ of mandamus ordering the United States District Court for the Southern District of New York to enter a proposed consent judgment between the Commission and defendant Citigroup Global Markets, Inc in *SEC v. Citigroup Global Markets, Inc.*, No. 1:11-civ-7387-JSR (S.D.N.Y.). The district court rejected this proposed consent judgment in an order dated November 28, 2011 because the judgment, in which Citigroup neither admitted nor denied the allegations against it, was not based on facts “established either by admissions or by trials.” Attachment A, at 15.

The Commission has directly appealed the district court’s interlocutory order pursuant to 28 U.S.C. 1292(a)(1) and *Carson v. American Brands, Inc.*, 450 U.S. 79 (1981). This appeal has been docketed as No. 11-5227. The Commission contends that this Court has jurisdiction under Section 1292(a)(1), and it seeks the issuance of a writ of mandamus only to the extent the Court concludes that it lacks

appellate jurisdiction under Section 1292(a)(1). In the event that the Court determines it lacks jurisdiction under Section 1292(a)(1), the writ should issue because “no adequate alternative remedies are available,” because “the issue involved is novel and significant and its resolution will aid the administration of justice,” and because the Commission has “‘clear and indisputable right’ to the writ” as the district court clearly erred by creating an unprecedented bright-line rule under which it rejected a proposed consent judgment solely because it did not contain facts established either by admissions or by trials. *SEC v. Rajaratnam*, 622 F.3d 159, 169–72 (2d Cir. 2010), citing *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380–81 (2004).

Because the facts and legal issues in the direct appeal and this petition are nearly identical, and because the request for a writ of mandamus is conditioned upon the jurisdictional question in the direct appeal, the Commission will present arguments in support of its petition in its brief filed in the direct appeal so as to avoid duplication and to reduce the volume of filings for the Court. *Rajaratnam*, 622 F.3d at 167–69 (granting mandamus request presented in single appellate brief that combined arguments on direct appeal and arguments in support of petition for a writ of mandamus). The Commission accordingly will move the Court to consolidate this petition with the docketed direct appeal once this petition is docketed.

Respectfully submitted,

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December 29, 2011

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2011, I electronically filed the Securities and Exchange Commission's petition for a writ of mandamus (and attachment) with the Court by e-mailing a PDF of the petition to the Court's case initiation e-mail address, and I served a copy of the document on the following counsel of record via UPS and e-mail, as well as provided a copy of the petition to the trial court judge via fax (The Honorable Jed S. Rakoff).

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