

No. 11-13254-BB

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

COMPUCREDIT HOLDINGS CORPORATION,

Plaintiffs-Appellants,

v.

AKANTHOS CAPITAL MANAGEMENT, LLC, ET AL.,

Defendants-Appellees.

On appeal from the United States District Court
for the Northern District of Georgia

**CONSENTED-TO MOTION OF PROPOSED *AMICI CURIAE* LOAN
SYNDICATIONS AND TRADING ASSOCIATION, MANAGED FUNDS
ASSOCIATION, AND SECURITIES INDUSTRY AND FINANCIAL
MARKETS ASSOCIATION FOR LEAVE TO FILE AN EN BANC *AMICUS*
BRIEF IN SUPPORT OF DEFENDANTS-APPELLEES AKANTHOS
CAPITAL MANAGEMENT, LLC, ET AL.**

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Securities Industry and Financial Markets Association

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to 11th Cir. R. 26.1, proposed *amici curiae* Loan

Syndications and Trading Association, Managed Funds Association, and Securities

Industry and Financial Markets Association hereby certify that the following

individuals or entities may have an interest in the outcome of this litigation:

1. Akanthos Capital Management, LLC
2. AQR Absolute Return Master Account
3. Aria Opportunity Fund Ltd.
4. Arnall Golden & Gregory LLP
5. Batten, Sr., Honorable Timothy C.
6. Beckett, E. Casey
7. Bondurant, Emmet J.
8. Bosch, Thomas B.
9. Bragman, Karen B.
10. Bramlett, Jeffrey O.
11. Caplan, Michael A.
12. Carter, Jason J.

13. CC Arbitrage, Ltd.
14. CNH CA Master Account, L.P.
15. Cockson, Michael F
16. CompuCredit Corporation
17. CompuCredit Holdings Corporation
18. Corona, Gregory J.
19. Crane, Daniel A.
20. Credit Roundtable, the
21. Dantzler, James David, Jr.
22. Davis, Dwight J.
23. Dickerson, W. Brinkely, Jr.
24. Ettinger, Yoon
25. Faegre & Benson LLP
26. Galileo Partners Fund I, L.P.
27. Getzendanner, Kevin B.
28. Gilbert, Richard W.
29. GLG Global Convertible Fund plc
30. GLG Investments IV plc: sub-fund GLG Global Convertible UCITS
(Distributing) Fund

31. GLG Investments plc: sub-fund GLG Global Convertible UCITS Fund
32. GLG Market Neutral Fund
33. Greenberg Traurig, LLP
34. Hanna, David G.
35. Hanna, Frank J., III
36. Heller, Lisa L.
37. Highbridge International LLC
38. House, Richard R., Jr.
39. Jordan, Jonathan W.
40. Kamunting Street Master Fund, Ltd.
41. KBC Financial Holdings, Inc.
42. KBC Financial Products (Cayman Islands) Ltd.
43. KBC Group N.V. (KBC)
44. King, Michael J.
45. King & Spalding, LLP
46. Kingstown Partners, L.P.
47. Kirpalani, Rohit
48. Kyle, Honorable Richard H.
49. Loan Syndications and Trading Association

50. Lowrey, Frank M. IV
51. Managed Funds Association
52. Madel, Christopher W.
53. Maslia, David
54. Mast, J. Timothy
55. Michael, Heather Smith
56. Niska, Harry N.
57. Nodzon, Bernard E.
58. Nugent, Janna S.
59. Orenstein, John
60. Pandora Select Advisors, LLC
61. Parsoon Opportunity Fund Ltd.
62. Pierce, Kelly K.
63. Rains, John H., IV
64. Ramachandrappa, Naveen
65. Robins Kaplan Miller & Ciresi
66. Rosenbaum, Honorable James M.
67. Rosencrants, Thomas G.
68. Ross & Orenstein, LLC

69. Ross, Jeff I.
70. Securities Industry and Financial Markets Association
71. Silverman, Moses
72. Smith, Michael R.
73. Srinivasan, K.K.
74. Stoeppelwerth, Ali M.
75. Synnott, Aidan
76. Tenor Opportunity Master Fund, Ltd.
77. Tietjen, Randall
78. Troutman Sanders, LLP
79. Volling, James L.
80. Whitebox Advisors, LLC
81. Whitebox Combined Advisors, LLC
82. Whitebox Convertible Arbitrage Advisors, LLC
83. Whitebox Hedged High Yield Advisors, LLC
84. Whitehead, J. Paul, III
85. Wildfang, K. Craig



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MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Pursuant to Fed. R. App. P. 29 and 11th Cir. Rule 29-1, proposed *amici curiae* Loan Syndications and Trading Association, Managed Funds Association, and Securities Industry and Financial Markets Association hereby submit this consented-to motion for leave to file an *amicus* brief in support of Defendants-Appellees Akanthos Capital Management, LLC, et al. Counsel for Plaintiff-Appellant CompuCredit Holdings Corporation and counsel for Defendants-Appellees Akanthos Capital Management, LLC, et al. have both consented to proposed *amici*'s motion to participate in this appeal as *amici curiae*.

**I.
STATEMENT OF INTEREST**

The Loans Syndications and Trading Association (“LSTA”) is a not-for-profit trade association that represents a broad and diverse membership involved in the origination, syndication, and trading of commercial loans. Its 318 members include commercial banks, investment banks, broker-dealers, mutual funds, insurance companies, fund managers, and other institutional lenders, as well as services providers and vendors. LSTA works to foster the development of policies and practices designed to promote just and equitable market principles and facilitate transactions in loans. Since 1995, LSTA has developed standardized practices, procedures, and documentation to enhance market efficiency, transparency, and stability.

The Managed Funds Association (“MFA”) is a not-for-profit organization established to enable investors in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry’s contributions to the global economy. MFA represents the global alternative investment industry and its investors by advocating for sound industry practices and policies that foster efficient, transparent, and fair capital markets. MFA members help pension plans, university endowments, charitable organizations, qualified individuals, and other institutional investors to diversify their investments, manage risk, and generate attractive returns. Collectively, MFA members manage over \$850 billion in assets. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, and North America.

The Securities Industry and Financial Markets Association (“SIFMA”) brings together the shared interests of hundreds of securities firms, banks, and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation, and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (“GFMA”).

The interest of *amici* in this case lies in their desire to prevent the creation of a new legal rule contrary to the established principles of antitrust law that could upset the settled expectations and practices of their members and other lenders and corporate borrowers in the market for bank debt and corporate bonds. As described in more detail in the argument that follows, CompuCredit’s proposed rule, though superficially tailored, would threaten to freeze all pre-bankruptcy coordination among creditors for existing debt, and to forbid as per se illegal a long-established, near-universal creditor behavior that benefits not only creditors but also borrowers, businesses, and the economy as a whole. Such a restriction would increase the costs of credit and could dramatically constrict credit for all businesses. As a consequence, businesses will be less able to raise needed capital to hire new workers, make new investments, or undertake new projects. Those consequences inevitably will have a chilling effect on the economy as a whole.

II.
THE PROPOSED *AMICUS CURIAE* BRIEF
IS DESIRABLE AND RELEVANT

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, this Court may grant leave to proposed *amici* to file an *amicus curiae* brief. *See* Fed. R. App. P. 29(a). The Rule directs a party requesting leave to state its “interest” and “the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.” Fed. R. App. P. 29(b).

Courts are often willing to grant leave. See *Neonatology Assocs., P.A. v. Comm'r.*, 293 F.3d 128, 133 (3d Cir. 2002) (Alito, J.) (“[O]ur court would be well advised to grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet Rule 29’s criteria as broadly interpreted. I believe that this is consistent with the predominant practice in the courts of appeals.”); Michael E. Tigar & Jane B. Tigar, *Federal Appeals Jurisdiction & Practice* § 2:20 (3d ed. 1999) (“Even when the other side refuses to consent to an amicus filing, most courts of appeals freely grant leave to file, provided the brief is timely and well-reasoned.”). There is good reason for this willingness. As Justice Breyer pointed out in the context of cases involving scientific or technical issues, the information provided by *amici* with specialized knowledge in a field “improves the quality” of judicial decisionmaking. Stephen G. Breyer, *The Interdependence of Science and Law*, in American Association for the Advancement of Science, *Science and Technology Policy Yearbook* (1999), Ch. 9, available at <http://www.aaas.org/spp/yearbook/chap9.htm>. And as then Judge Alito noted, *amicus* briefs may be useful in “explain[ing] the impact a potential holding might have on an industry or other group.” *Neonatology Assocs.*, 293 F.3d at 132 (citing Luther T. Munford, *When Does the Curiae Need An Amicus?*, 1 J. App. Prac. & Process 279 (1999)).

By contrast, a restrictive policy risks the court's loss of a valuable outside viewpoint "at a relatively early stage of the appeal." *Neonatology Assocs.*, 293 F.3d at 132-33. "A restrictive policy may also convey an unfortunate message about the openness of the court." *Id.* at 133.

The benefits of hearing from affected interests as *amici curiae* are particularly pronounced in en banc proceedings, which usually involve questions of great public importance. *See* Fed. R. App. P. 35(a) ("An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless: (1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance."); *Cnty. State Bank v. Strong*, 565 F.3d 1305, 1306 (11th Cir. 2009) (en banc) (concluding that a case does not merit en banc review when it no longer involves a question of exceptional importance); *see also, e.g., Adler v. Duval Cnty. Sch. Bd.*, 250 F.3d 1330, 1332 (11th Cir. 2001) (en banc) (noting consideration of *amici* briefs in reaching en banc decision).

With due regard for these considerations, this Court has routinely granted *amicus* leave to organizations representing various interests and professions, including industry and trade groups. *See, e.g., CBS Broad., Inc. v. EchoStar Commc'ns Corp.*, 265 F.3d 1193, 1198 n.4 (11th Cir. 2001) (granting leave, inter alia, to the National Association of Broadcasters and the Satellite

Broadcasting and Communication Association); *Wyatt v. Aderholt*, 503 F.2d 1305, 1308 n.3 (5th Cir. 1974) (noting that leave was granted, inter alia, to the American Orthopsychiatric Association and the American Psychological Association); *Nardelli v. Stuyvesant Ins. Co. of New York*, 269 F.2d 592, 592-93 (5th Cir. 1959) (granting leave to the American Institute of Marine Underwriters). Indeed, it very recently granted *amicus* leave to LSTA in another case involving debtor-creditor relations. *See In re TOUSA, Inc.*, 680 F.3d 1298 (11th Cir. 2012).

The proposed *amici* in this case are financial industry organizations possessing deep institutional knowledge of the credit markets. The LSTA, MFA, and SIFMA, through their numerous members, are in a perfect position to comment on issues affecting the financial industry and the engines of credit in this economy. Their broad and diverse membership ensures that they hear from a variety of participants in the national (and global) credit markets and can accurately reflect the concerns of this vital sector of the economy. Given these distinct advantages, proposed *amici* have been granted leave to file *amicus* briefs in a wide variety of cases involving debtor-creditor relations, antitrust law, securities law, and other commercial and legal issues in this and other courts around the country. *See, e.g., RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065 (2012) (SIFMA, LSTA, MFA); *Morrison v. Nat'l Australia Bank Ltd.*, 130 S. Ct. 2869 (2010) (SIFMA); *Credit Suisse Sec. (USA) LLC v. Billing*, 551 U.S. 264

(2007) (SIFMA); *In re TOUSA, Inc.*, 680 F.3d 1298 (LSTA); *CSX Corp. v. Children's Inv. Fund Mgmt. (UK) LLP*, 654 F.3d 276 (2d Cir. 2011) (MFA); *In re DBSD N. Am., Inc.*, 634 F.3d 79 (2d Cir. 2011) (LSTA); *Hunter v. Fed. Energy Regulatory Comm'n*, 403 Fed. Appx. 525 (D.C. Cir. 2010) (MFA); *In re Philadelphia Newspapers, LLC*, 599 F.3d 298 (3d Cir. 2010); *Fed. Trade Comm'n v. Ken Roberts Co.*, 276 F.3d 583 (D.C. Cir. 2001) (MFA); *Elliott Assoc., L.P. v. Banco de la Nacion*, 194 F.3d 363 (2d Cir. 1999) (LSTA); *Ross v. Bank South, N.A.*, 885 F.2d 723 (11th Cir. 1989) (predecessor of SIFMA).

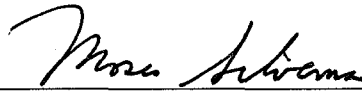
In this case, proposed *amici's* participation would provide the Court with a big-picture view of the issues and elucidate the repercussions of a faulty ruling on the credit markets and the national economy as a whole. It would supply a broader perspective in which to view the submissions of the parties and help the Court to decide the case well informed of the larger implications of its decision.

III.
CONCLUSION

For the foregoing reasons, proposed *amici* respectfully request that the Court grant their motion for leave to file an *amicus curiae* brief.

Dated: June 29, 2012

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed via Federal Express Priority Overnight this 29th day of June, 2012 to:

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I further certify that an original and three (3) copies of the motion were filed on this day via Federal Express Priority Overnight to John Ley, Clerk of Court, U.S. Court of Appeals for the 11th Circuit, 56 Forsyth St., N.W., Atlanta, Georgia 30303.

By: 
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