UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PASHA ANWAR, et al., Plaintiffs, v. FAIRFIELD GREENWICH LIMITED, et al., Defendants. This Document Relates To: *Emilio Diaz* v. *Standard Chartered Bank International (Americas) Ltd.*, No. 12-CV-9146.	)	Master File No. 09-CV-118 (VM)

Standard Chartered Bank International (Americas) Limited's
Answer and Defenses to the Complaint

Defendant Standard Chartered Bank International (Americas) Limited ("SCBI"), through its undersigned counsel, hereby responds as follows to the Complaint based on present knowledge. SCBI reserves the right to supplement and amend this Answer and to add additional defenses of which it becomes aware.

I. ANSWER

Nature of the Action

1. SCBI denies the allegations of paragraph 1, except admits: (i) plaintiff was a customer of SCBI; (ii) substantially all of the assets of Fairfield Sentry ("Sentry") were invested with Bernard L. Madoff Investment Securities ("BLMIS"); and (iii) plaintiff purports to allege fraud and related common law causes of action. SCBI avers that, pursuant to stipulation of the parties and order of the Court: (i) plaintiff has struck any allegations of misrepresentations made

in the context of his breach of fiduciary duty claim; and (ii) plaintiff has struck any allegations of misrepresentations regarding due diligence and characteristics of the Sentry fund in the context of his negligent misrepresentation claim. (Dkt. No. 1193.[1])

2. SCBI admits the allegations of paragraph 2.

3. SCBI admits that the Complaint purports to characterize the allegations in the complaint filed by the Securities and Exchange Commission captioned *SEC* v. *Madoff*, No. 08-CV-10791 (S.D.N.Y. Dec. 11, 2008), and respectfully refers the Court to the SEC complaint for a complete and accurate description of its contents.

4. SCBI denies the allegations of paragraph 4.

5. SCBI denies the allegations of paragraph 5, except admits that Sentry was generally regarded as a sought-after fund.

6. SCBI denies the allegations of paragraph 6.

7. SCBI denies the allegations of paragraph 7, except admits: (i) plaintiff invested approximately $250,000 in Sentry through plaintiff's account at SCBI; and (ii) Sentry invested substantially all of its assets in BLMIS.

8. The allegations of paragraph 8 contain legal conclusions to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 8.

9. SCBI denies the allegations of paragraph 9.

10. SCBI denies the allegations of paragraph 10.

11. SCBI denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11, and therefore denies them.

[1] All citations to docket entries refer to the master docket, No. 09-118, unless otherwise noted.

Jurisdiction, Venue and Parties

12. SCBI admits the allegations of paragraph 12.

13. SCBI denies the allegations of paragraph 13, except admits that plaintiff purports to base venue for this action on 28 U.S.C. § 1391(a)(2) and that SCBI conducted business within the Southern District of Florida during the relevant time period.

14. SCBI admits that plaintiff held an account at American Express Bank International ("AEBI"), later renamed SCBI. SCBI denies the remaining allegations in paragraph 14.

15. SCBI denies the allegations in paragraph 15, except admits: (i) SCBI is organized under the laws of the United States; (ii) SCBI is authorized to do business in Florida, with a place of business at 1111 Brickell Avenue, Miami, Florida 33131; and (iii) AEBI was renamed SCBI.

16. SCBI admits that plaintiff purports to base the jurisdiction of the United States District Court for the Southern District of Florida over SCBI based on SCBI's status as a corporation organized under the laws of the United States.

17. SCBI admits: (i) American Express Bank Ltd. ("AEBL") was the direct parent of AEBI; (ii) AEBL and AEBI offered private banking services to individuals outside of the United States; (iii) AEBL (and its subsidiary, AEBI) were acquired by Standard Chartered PLC in or about February 2008; (iv) AEBL was renamed to SCI in January 2009; and (v) AEBI was renamed to SCBI in August 2008. SCBI denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 17, and therefore denies them.

18. SCBI admits: (i) Standard Chartered PLC is organized under the laws of the United Kingdom, with a place of business at 1 Basinghall Avenue, London, EC2V 5DD, United Kingdom; (ii) Standard Chartered PLC is the direct parent of Standard Chartered Holdings

Limited; (iii) Standard Chartered Holdings Limited is the direct parent of Standard Chartered Bank; (iv) Standard Chartered Bank is the direct parent of SCBI. SCBI denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 18, and therefore denies them.

Factual Allegations

19. SCBI denies the allegations of paragraph 19, except admits that plaintiff opened an account with AEBI. SCBI avers that plaintiff executed account opening documents on September 24, 2001, and on or about October 1, 2001 opened an account at the Bank.

20. SCBI denies the allegations of paragraph 20, except admits that AEBL and AEBI offered private banking services to individuals outside of the United States.

21. SCBI denies the allegations of paragraph 21.

22. SCBI denies the allegations of paragraph 22.

23. SCBI denies the allegations of paragraph 23, except admits that Jennifer Sierra was a relationship manager at AEBI in January 2008.

24. SCBI denies the allegations of paragraph 24, except admits that Sentry had a record of positive returns.

25. SCBI denies the allegations of paragraph 25, except admits that Sentry had a history of stable and steady returns.

26. SCBI denies the allegations of paragraph 26, except admits that Sentry had consistent returns.

27. SCBI denies the allegations of paragraph 27.

28. SCBI denies the allegations of paragraph 28.

29. SCBI denies the allegations of paragraph 29, except admits that in or around May 2008, plaintiff authorized an investment of $250,000 in Sentry.

30. SCBI admits that plaintiff held a total of 188.576 shares of Sentry and that a total amount of approximately $250,000 had been invested from plaintiff's account into Sentry.

31. SCBI denies the allegations of paragraph 31.

32. SCBI denies the allegations of paragraph 32.

33. SCBI denies the allegations of paragraph 33, except admits: (i) on or about September 18, 2007, Standard Chartered PLC announced that it had reached an agreement to acquire AEBL from the American Express Company; and (ii) Standard Chartered PLC acquired AEBL from the American Express Company in or around February 2008.

34. SCBI admits the allegations of paragraph 34.

35. SCBI denies the allegations of paragraph 35, except admits that Standard Chartered PLC acquired AEBL, which was the direct corporate parent of AEBI, which in turn serviced plaintiff's account.

36. SCBI denies the allegations of paragraph 36.

37. SCBI denies the allegations of paragraph 37.

38. SCBI denies the allegations of paragraph 38, except admits that plaintiff was charged standard fees.

39. SCBI denies the allegations of paragraph 39, except admits that plaintiff was charged standard fees.

40. SCBI denies the allegations of paragraph 40.

41. SCBI denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41, and therefore denies them.

42. SCBI admits that it was aware, based on due diligence and disclosures in the Sentry Private Purchase Memorandum ("PPM"), that Sentry invested a large portion of its assets

with BLMIS and that Sentry's investment strategy was disclosed in its PPM, of which SCBI was aware.

43. SCBI denies the allegations of paragraph 43.

44. SCBI denies the allegations of paragraph 44.

45. SCBI denies the allegations of paragraph 45.

46. SCBI denies the allegations of paragraph 46.

47. SCBI denies the allegations of paragraph 47, except admits: (i) plaintiff purports to describe events occurring in December 2008; (ii) Madoff was arrested on criminal charges of securities fraud; and (iii) investments in Sentry substantially declined in value as a result of the fraud perpetrated by Madoff and BLMIS.

AS AND FOR A FIRST CLAIM
(Breach of Duties Owed to Plaintiff in Recommending the Fairfield Sentry Fund Investment)

48. SCBI repeats and realleges its responses to paragraphs 1 through 47 as if fully set forth herein, except to the extent that the allegations in these paragraphs allege misrepresentations made in breach of an alleged fiduciary duty, to which no response is required because plaintiff has struck those allegations from the Complaint (Dkt. No. 1193).

49. SCBI denies the allegations of paragraph 49.

50. The allegations of paragraph 50 contain legal conclusions to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 50.

51. The allegations of paragraph 51 contain legal conclusions to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 51.

52. The allegations of paragraph 52, including paragraphs 52(a)-(o), contain legal conclusions to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 52.

53. SCBI denies that skepticism about BLMIS was widespread among those who looked closely at its operations, and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 53, and therefore denies them. SCBI respectfully refers the Court to the unidentified article in PENSION & INVESTMENTS referenced by plaintiff in paragraph 53 of the Complaint for a complete and accurate description of its contents.

54. The allegations of paragraph 54 contain legal conclusions to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 54, except admits that materials, including the May 2001 MAR/HEDGE and BARRON'S articles referenced in paragraph 54 of the Complaint, were publicly available, and respectfully refers the Court to those documents for a complete and accurate description of their contents.

55. SCBI denies the allegations of paragraph 55, except avers that certain of its affiliates offered Sentry and/or Fairfield Sigma, among other investments, to customers.

56. SCBI denies the allegations of paragraph 56.

57. The allegations of paragraph 57 have been struck from the Complaint and therefore no response is required. (Dkt. No. 1193.) To the extent a response is deemed required, SCBI denies the allegations of paragraph 57.

58. The allegations of paragraph 58, including paragraphs 58(a)-(i), contain legal conclusions and allegations of misrepresentations that plaintiff has struck from the Complaint (Dkt. No. 1193) to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 58.

59. SCBI denies the allegations of paragraph 59.

60. SCBI denies the allegations of paragraph 60, including by denying that plaintiff suffered any damages as a result of conduct by SCBI.

61. SCBI denies the allegations of paragraph 61, including by denying that plaintiff suffered any damages as a result of conduct by SCBI.

AS AND FOR A SECOND CLAIM
(Negligent Misrepresentation)

62. SCBI repeats and realleges its responses to paragraphs 1 through 61 as if fully set forth herein.

63. The allegations of paragraph 63 have been struck from the Complaint and therefore no response is required. (Dkt. No. 1193.) To the extent a response is deemed required, SCBI denies the allegations of paragraph 63.

64. The allegations of paragraph 64 contain legal conclusions and allegations of misrepresentations that plaintiff has struck from the Complaint (Dkt. No. 1193) to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 64.

65. The allegations of paragraph 65 contain legal conclusions to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 65.

66. The allegations of paragraph 66 have been struck from the Complaint and therefore no response is required. (Dkt. No. 1193.) To the extent a response is deemed required, SCBI denies the allegations of paragraph 66, including paragraphs 66(a)-(c).

67. The allegations of paragraph 67 have been struck from the Complaint and therefore no response is required. (Dkt. No. 1193.) To the extent a response is deemed required, SCBI denies the allegations of paragraph 67.

68. The allegations of paragraph 68 have been struck from the Complaint and therefore no response is required. (Dkt. No. 1193.) To the extent a response is deemed required, SCBI denies the allegations of paragraph 68.

69. The allegations of paragraph 69 have been struck from the Complaint and therefore no response is required. (Dkt. No. 1193.) To the extent a response is deemed required, SCBI denies the allegations of paragraph 69.

70. The allegations of paragraph 70 have been struck from the Complaint and therefore no response is required. (Dkt. No. 1193.) To the extent a response is deemed required, SCBI denies the allegations of paragraph 70.

71. The allegations of paragraph 71 contain legal conclusions and allegations of misrepresentations that plaintiff has struck from the Complaint (Dkt. No. 1193) to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 71, including by denying that plaintiff suffered any damages as a result of conduct by SCBI.

72. The allegations of paragraph 72 have been struck from the Complaint and therefore no response is required. (Dkt. No. 1193.) To the extent a response is deemed required, SCBI denies the allegations of paragraph 72.

73. The allegations of paragraph 73 have been struck from the Complaint and therefore no response is required. (Dkt. No. 1193.) To the extent a response is deemed required,

SCBI denies the allegations of paragraph 73, including by denying that plaintiff suffered any damages as a result of conduct by SCBI.

AS AND FOR A THIRD CLAIM
(Common Law Fraud)

74. SCBI repeats and realleges its responses to paragraphs 1 through 73 as if fully set forth herein.

75. SCBI denies the allegations of paragraph 75.

76. SCBI denies the allegations of paragraph 76.

77. SCBI denies the allegations of paragraph 77, including by denying that plaintiff suffered any damages as a result of conduct by SCBI.

78. SCBI denies the allegations of paragraph 78, including by denying that plaintiff suffered any damages as a result of conduct by SCBI.

AS AND FOR A FOURTH CLAIM
(Gross Negligence Against All Defendants)

79. SCBI repeats and realleges its responses to paragraphs 1 through 78 as if fully set forth herein.

80. The allegations of paragraph 80 contain legal conclusions to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 80.

81. The allegations of paragraph 81 contain legal conclusions to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 81.

82. SCBI denies the allegations of paragraph 82, including paragraphs 82(a)-(d).

83. SCBI denies the allegations of paragraph 83, including by denying that plaintiff suffered any damages as a result of conduct by SCBI.

84. SCBI denies the allegations of paragraph 84.

85. SCBI denies the allegations of paragraph 85, including by denying that plaintiff suffered any damages as a result of conduct by SCBI.

Denial of Prayer for Relief

SCBI denies that plaintiff is entitled to any of the relief prayed for on pages 21 and 22 of the Complaint.

Jury Trial Demand

Plaintiff's demand for a trial by jury is subject to his account agreement(s) with SCBI.

II. DEFENSES

First Defense

Plaintiff fails to state a claim upon which relief can be granted.

Second Defense

Any damages allegedly suffered by plaintiff were caused by the intervening act(s) or omission(s) of persons or entities other than SCBI, and said act(s) or omission(s) superseded any act or omission by SCBI for which it might be considered liable.

Third Defense

Plaintiff's claims are barred, in whole or in part, because SCBI's alleged conduct was not the cause of plaintiff's injuries.

Fourth Defense

The claims asserted in the Complaint are barred by the equitable doctrines of laches, waiver, estoppel, unclean hands, and other equitable defenses that may appear upon further discovery and investigation.

Fifth Defense

SCBI has not engaged in any conduct that would entitle plaintiff to an award of punitive damages.

Sixth Defense

Plaintiff's claims are barred, in whole or in part, because plaintiff knowingly and voluntarily assumed the risks inherent in the investments at issue.

Seventh Defense

Plaintiff was contributorily and/or comparatively negligent.

Eighth Defense

Plaintiff's claims are barred, in whole or in part, by the economic loss doctrine.

Ninth Defense

Plaintiff's claims are barred, in whole or in part, because they are preempted by the Securities Litigation Uniform Standards Act, 15 U.S.C. § 78bb(f)(1).

Tenth Defense

Plaintiff did not justifiably or reasonably rely on any alleged representations, acts or omissions by SCBI.

Eleventh Defense

Plaintiff's claims are barred, in whole or in part, because SCBI, or any person or entity acting or purporting to act on SCBI's behalf, acted in good faith and with due care and diligence.

Twelfth Defense

Plaintiff's claims are barred, in whole or in part, by virtue of his account agreement(s) with SCBI.

Thirteenth Defense

Plaintiff's claims are barred, in whole or in part, by virtue of disclosures in the applicable subscription agreement(s) and private placement memorandum applicable to plaintiff's purchase(s) of shares in Sentry.

Fourteenth Defense

SCBI was entitled to and did, reasonably and in good faith, rely on the acts and representations of other third parties with respect to the transactions and events that are the subject of plaintiff's claims.

Fifteenth Defense

Any damages recoverable by plaintiff from SCBI are limited to the percentage of fault attributable to SCBI, and thus would not include the percentage of fault attributable to at-fault third parties, including but not limited to the defendants named in the Second Consolidated Amended Complaint in *Anwar* v. *Fairfield Greenwich Limited*, No. 09-CV-0118.

Sixteenth Defense

Any recovery by plaintiff against SCBI is to be offset, in whole or in part, by any and all other recoveries (including, where applicable, redemptions) by plaintiff with respect to its investments in Sentry.

Seventeenth Defense

SCBI is entitled to recover indemnity and/or contribution from others for any liability they incur to plaintiff.

Eighteenth Defense

Any recovery by plaintiff against SCBI is to be offset by any and all debts, liabilities or obligations owed by plaintiff to SCBI.

Nineteenth Defense

Plaintiff's claims for relief are barred because and to the extent that plaintiff failed to use reasonable diligence under the circumstances to mitigate or minimize his alleged damages.

Twentieth Defense

Plaintiff's claims for relief are barred by applicable statutes of limitation.

WHEREFORE, SCBI respectfully demands judgment dismissing this action with prejudice together with its costs and disbursements.

Respectfully submitted,

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