EXHIBIT A

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June 21, 2013

VIA FACSIMILE AND FEDERAL EXPRESS

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-9612

Re: Subpoenas issued in *Anwar v. Fairfield Greenwich Limited*
No. 09 Civ. 00118 (VM)(FM) (S.D.N.Y.)

Dear Secretary Murphy:

We represent GlobeOp Financial Services LLC ("GlobeOp") and write on behalf of GlobeOp, PricewaterhouseCoopers Accountants N.V. ("PwC Netherlands"), PricewaterhouseCoopers LLP ("PwC Canada"), and The Citco Group Limited and related entities ("Citco") (collectively, "Defendants") in the above-referenced action.

On June 7, 2013, the Securities and Exchange Commission ("SEC") denied Defendants' request to depose nine current or former SEC employees. On June 14, 2013, pursuant to Rule 430(b)(1) of the SEC's Rules of Practice, Defendants filed a notice of our intention to petition for review this decision. Pursuant to Rule 430(b)(2), we enclose our Petition for Review of the SEC's June 7 decision.

Sincerely,

Jonathan D. Cogan
Justin Sommers
+1 212 488 1200

cc: All *Anwar* Counsel

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In re Subpoenas Served in ANWAR, *et al.* v. FAIRFIELD GREENWICH LIMITED, *et al.*	Master File No. 09-cv-118 (VM) (S.D.N.Y.)

PETITION FOR REVIEW OF DECISION TO DENY DEFENDANTS' REQUEST TO DEPOSE NINE CURRENT AND FORMER SECURITIES AND EXCHANGE COMMISSION EMPLOYEES

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Attorneys for Defendant
GlobeOp Financial Services LLC

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Defendants GlobeOp Financial Services LLC, Citco Group Limited and related entities,[1] PricewaterhouseCoopers Accountants N.V. ("PwC Netherlands"), PricewaterhouseCoopers LLP (PwC Canada), (collectively, "Defendants"), pursuant to 17 C.F.R. § 201.430(b)(2), hereby respectfully petition for review of the June 7, 2013 decision (the "Decision") of the United States Securities and Exchange Commission ("SEC" or "Commission") refusing to authorize SEC employees Simona Suh, Meaghan Cheung, Peter Lamore, Mark Donohue, John Gentile, John McCarthy, William Ostrow, Eric Swanson, and Demetrios Vasilakis (the "Witnesses") to provide the testimony requested pursuant to subpoenas served on the SEC (the "Subpoenas").[2]

The Decision should be reversed for several reasons. First, there is a compelling public interest in having the Witnesses testify. The *Anwar* Defendants provided services to Fairfield Sentry Limited and affiliated Fairfield funds[3] (the "Funds"), which were Bernard L. Madoff Investment Securities, LLC's ("BLMIS") largest investment advisory clients, alleged to have held more than $5 billion with Madoff as of December 2008. The *Anwar* case is about whether the Defendants could have and should have uncovered and prevented Bernard Madoff's "Madoff") scheme. The SEC investigated and examined BLMIS and Madoff a number of times during the period that the Defendants provided services to the Funds. Each of the Witnesses was directly involved in at least one of the investigations or examinations. In the course of the SEC's investigations and examinations, each of the Witnesses had direct contact with Bernard Madoff

1. The Citco Group Limited, Citco Fund Services (Europe) B.V., Citco (Canada) Inc., Citco Global Custody N.V., Citco Fund Services (Bermuda) Limited, and Citco Bank Nederland N.V. Dublin Branch (collectively, the "Citco Defendants").

2. Enclosed as Exhibit 1 are copies of the deposition subpoenas issued in *Anwar v. Fairfield Greenwich Limited*, No. 09 Civ. 00118 (VM)(FM) (S.D.N.Y.) and *Walker, Truesdell, Roth & Assocs., Inc. v. GlobeOp Fin. Servs. LLC, et al.*, Index Nos. 600469/2009, 600498/2009 (N.Y. Sup. Ct.).

3. The Funds include Fairfield Sentry Limited, Greenwich Sentry Limited, and Greenwich Sentry Partners L.P.

or other BLMIS employees. Fairfield personnel were also a focus of the SEC's attention – both during its later examinations and investigations, as well as during the Office of Inspector General's investigation into the SEC's failure to uncover Madoff's fraud – and certain of the Witnesses were personally involved in gathering information from Fairfield personnel. The Witnesses thus have firsthand knowledge regarding the world's largest-ever Ponzi scheme, the SEC's investigations and examinations of Madoff and BLMIS, BLMIS's operations, and Fairfield's potential involvement in Madoff's scheme that is not available from any other source.

Second, the requested testimony will not impose an undue burden on the Commission or the Witnesses. The ordinary burden of preparing witnesses for testimony is not "undue," even where the proposed deponent is a nonparty. Here, nearly half of the Witnesses are no longer SEC employees, and any time these Witnesses expend preparing for their depositions will not have any material impact on the SEC's ability to carry out its business. The Decision makes no reference to the compromise offered by the Defendants of deposing only four of the nine Witnesses who were the subject of the Subpoenas. Furthermore, the Decision does not indicate that the SEC has been inundated with Madoff-related requests for testimony. And, in general, the same factors that make this a matter of unique public interest make it unlikely that allowing the Witnesses to testify will set a precedent that would overwhelm the SEC with similar requests for testimony in the future. There is only one largest-ever Ponzi scheme, BLMIS had only one largest client, and there is only one relevant, related, pending litigation – the *Anwar* action in which the Witnesses were subpoenaed.

I. BACKGROUND

A. The *Anwar* Action and SEC Investigations

The *Anwar* Plaintiffs purport to represent a class of investors in certain Funds established by the Fairfield Greenwich Group ("Fairfield" or "FGG"), some of which entrusted

substantially all of their assets to BLMIS. As the world now knows, Madoff was using BLMIS to run the largest Ponzi scheme in history. When Madoff confessed to the fraud in December 2008, it was revealed that the FGG funds did not possess the assets purportedly held by BLMIS, and the value of Plaintiffs' investments in the funds was allegedly reduced to zero.

Plaintiffs thereafter brought the *Anwar* putative class action against not only the directors and officers of the FGG funds, but also against third parties hired by those funds at various points in time to perform administrative services (certain Citco defendants and GlobeOp), custodial services (certain Citco defendants), and auditing services (PwC Netherlands and PwC Canada). (*Anwar v. Fairfield Greenwich Ltd.*, No. 09 Civ. 00118 (VM)(FM) (S.D.N.Y. filed Jan 7, 2009).)[4] Central to Plaintiffs' case is the issue of whether the Defendants were negligent for having failed to uncover Madoff's fraud. (Second Consol. Am. Compl., Sept. 29, 2008, ECF No. 273 ("SCAC" or "Complaint") ¶¶ 1, 433-445, 505-508, 554-557.) Plaintiffs allege that the Defendants ignored or failed to investigate "red flags" that cast doubt on the legitimacy of BLMIS and the returns generated for the Funds, and that additional diligence regarding Madoff and/or site visits to BLMIS would have uncovered Madoff's fraud. (SCAC ¶¶ 301, 302, 315.)

Plaintiffs' Complaint also puts the SEC's investigations squarely at issue. As the Defendants noted in an April 25, 2013 letter to the Commission, the Complaint makes specific reference to one of the SEC's BLMIS investigations, as well as to interviews that certain Witnesses conducted with individuals from Fairfield. (Ex. 4.) The Complaint alleges that certain "Fairfield Defendants sought and followed Madoff's instructions on how to approach their upcoming [SEC] testimony," and that "Madoff . . . instruct[ed] the Fairfield Defendants in

4. All docket citations refer to entries in *Anwar v. Fairfield Greenwich Ltd.*, No. 09 Civ. 0118 (VM) (S.D.N.Y.).

what to say and what not to say to the SEC." (SCAC ¶ 234.) The Complaint further alleges that the Fairfield individuals thereby "aided Madoff in deceiving the SEC." *Id.* The Complaint goes on to allege that this deception had ripple effects beyond the SEC investigation, as "[t]he Fairfield Defendants . . . cit[ed] to the inconclusive result of the SEC investigation in their public statements to Fund investors as proof that Madoff and B[L]MIS could be trusted as [a] faithful manager and custodian of the Funds' assets." *Id.* The *Anwar* plaintiffs' allegations therefore put at issue the purpose, scope, conduct and resolution of the SEC's investigation.

Each of the Witnesses participated in one of the SEC's investigations or examinations of Madoff and/or BLMIS. For example, as part of the 1992 cause examination, investigators Gentile and Vasilakis spoke with Madoff on the phone, sent document requests to BLMIS, and spent at least one day at BLMIS's offices. (OIG Report[5] Ex. 100 at 5, 15, OIG Report Ex. 101 at 5.) During the SEC's 2004-2005 investigation, Lamore and Ostrow sent document requests to BLMIS and reviewed the documents BLMIS provided in response. Both Lamore and Ostrow spent more than two and a half months on-site at BLMIS, interacting daily with Madoff himself. In connection with the investigation, Lamore and Ostrow specifically questioned Madoff about the consistency of the split strike conversion strategy's returns and Madoff's incredible ability to time the market. (OIG Report Ex. 48 at 42:25-44:1; 65:16-22.) As part of the 2005-2006 investigation, Lamore, Suh and Cheung interviewed FGG officers, including Amit Vijayvergiya (OIG Report at 276), and took the depositions of Bernard Madoff, Frank DiPascali, and FGG CEO Jeffrey Tucker. (*See* OIG Report at 290, 293, 310.) The investigators directly inquired about the purported "red flags" that the *Anwar* Plaintiffs allege,

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5. All citations to the "OIG Report" and any exhibits thereto refer to the public version of the SEC Office of Inspector General report "Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme." Report No. OIG-509.

including the volume of Madoff's options trading, and made inquiries regarding Madoff's accounts at the Depository Trust Company. (*See, e.g.*, OIG Report Ex. 48 at 238:4-8; 242:7-10.) The investigators also contacted at least one individual at the Chicago Board Options Exchange. (OIG Report Ex. 48 at 240:9-10.) Suh and Cheung sent document requests to both BLMIS and Fairfield, and reviewed the documents produced in response. (OIG Report at 280, 284.) As a result of these activities, including their frequent and substantive contact with Madoff, the Witnesses obtained firsthand knowledge regarding Madoff and BLMIS's operations, and Fairfield's involvement therein.

B. The Subpoenas and Decision

On February 27, 2013, Defendants served the Subpoenas requesting the deposition testimony of nine former and current SEC employees who participated in the SEC's examinations and investigations into Madoff and BLMIS. (Ex. 2.) On March 4, SEC Assistant General Counsel Melinda Hardy requested additional information regarding the information sought from the proposed Witnesses. (Ex. 3.) On April 25, Defendants provided Ms. Hardy with additional information regarding the scope and purpose of the requested testimony. (Ex. 4.) Among other things, the Defendants stated that the Witnesses have direct knowledge of what Madoff and the Fairfield individuals said to the SEC, and that the Witnesses' testimony regarding that knowledge is important to understanding the nature and extent of Madoff's deception and Fairfield's involvement therein. Fairfield's conduct is critically important to the Defendants in defending against Plaintiffs' claims and assessing comparative fault. (*Id.* at 2.) Additionally, the letter stated that the Witnesses' personal knowledge is a source of evidence relevant to evaluating Plaintiffs' allegations regarding the potential effectiveness of any additional diligence that Plaintiffs now contend the Defendants should have performed. (*Id.*)

A series of conference calls followed to discuss the depositions during which the parties discussed a number of alternative arrangements. As demonstrated in Defendants' letter dated May 31, Defendants offered to limit the number of depositions to four witnesses (Simona Suh, Peter Lamore, Mark Donohue and John Gentile) in order to lessen any purported burden on the SEC. (Ex. 5.) The SEC also produced a small number of documents to Defendants that had already been made public pursuant to a FOIA request. Following these discussions, on June 7 SEC Associate General Counsel Richard M. Humes sent Defendants the Decision, refusing to authorize the requested depositions on the grounds that preparing for such depositions was unduly burdensome. (Ex. 6.) On June 14, Defendants timely submitted a Notice of Intent to Petition for Review of the Decision. (Ex. 7.)

II. ARGUMENT

As the Decision notes, SEC witnesses should be allowed to testify in response to a valid subpoena if disclosure is consistent with the public interest. The Decision asserts that the testimony the Defendants seek is contrary to the public interest because the testimony's relevance is outweighed by the burden the testimony would impose on the SEC. (Ex. 6 at 2.) The Decision's rationale (1) fails to take into account the broad public interest in the Madoff matter, (2) unduly minimizes the relevance of the testimony, and (3) overstates the burden on the Commission.

A. The Subject Matter of the Subpoenas is of Broad Public Interest

There is broad public interest in full disclosure regarding Madoff's fraud so that the fraud cannot be repeated. Madoff's deception is unparalleled in scope and scale.

Congressional testimony and hearings described Madoff's fraud as "extraordinary,"[6] and in *Anwar*, Judge Marrero described the fraud as "the largest financial fraud yet witnessed in the record of human wrongdoing and tragedy." *Anwar v. Fairfield Greenwich Ltd.*, 728 F. Supp. 2d 372, 412 (S.D.N.Y. 2010).[7] Although the Decision asserts that the SEC, in conducting its investigations and examinations of BLMIS, did not focus on verifying that BLMIS's customers' assets were safe (Decision at 3), protection of broker-dealer customers' assets is certainly within the scope of the SEC's jurisdiction. *See* Exchange Act Release No. 9856, Impact and Monitoring ("Rule 15c3-3 represents the first comprehensive program undertaken by the Commission to provide regulatory safeguards over customers' funds and securities held by broker-dealers."); *see also SIPC v. Barbour*, 421 U.S. 412 (1975) (the SEC has "plenary authority" to supervise SIPC). Although the SEC's work is of unquestioned importance to the securities markets and the public at large, that does not relieve SEC employees of the responsibility to provide testimony when they have firsthand knowledge relevant to an action. *See United States v. Bryan*, 339 U.S. 323, 331 (1950) ("the public . . . has a right to every man's evidence") (quoting Wigmore, Evidence § 2192 (3d ed.).); *United States v. Nixon*, 418 U.S. 683, 710 (1974) (exceptions "to the demand for every man's evidence are not lightly created nor expansively construed, for they are in derogation of the search for truth"); *Branzburg v. Hayes*, 408 U.S. 665, 688 (1972) (holding that even "men of the first rank and consideration . . . men in

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6. How the Securities Regulatory System Failed to Detect the Madoff Investment Securities Fraud, the Extent to Which Securities Insurance will Assist Defrauded Victims, and the Need for Reform: Hearing before the S. Comm. on Banking, Housing and Urban Affairs, 111th Cong. (2009) (statement of Sen. Christopher J. Dodd, Chairman, S. Comm. on Banking, Housing, and Urban Affairs).

7. Congress opined that Madoff's fraud was "a case study to guide the work of the Financial Services Committee in reshaping and reforming our Nation's financial services regulatory system." Assessing the Madoff Ponzi Scheme and Regulatory Failures: Hearing Before the Subcomm. on Capital Markets, Insurance, and Government Sponsored Enterprises of the H. Comm. on Financial Services, 111th Cong. (2009) (statement of Rep. Paul E. Knajorski, Chairman, Subcomm. on Capital Mkts., Ins., and Gov't Sponsored Enters. of the H. Comm. on Fin. Servs.).

high office" must provide testimony) (quoting 4 *The Works of Jeremy Bentham* 320-21 (J. Browning ed. 1843)).

B. The Witnesses' Testimony Is Relevant To The *Anwar* Action And Cannot Be Obtained From Any Other Source

The Decision expresses doubt that the testimony the Defendants seek to elicit is relevant in *Anwar* and describes the potential relevance of the testimony as that it "may show what may have happened if Defendants made certain inquiries." (Ex. 6 at 3.) First, relevant evidence is evidence "having any tendency to make the existence of any fact that is of consequence to the action more probable or less probable than it would be without the evidence," Fed. R. Evid. 401, and discovery requests need only be reasonably calculated to lead to the discovery of admissible evidence, Fed. R. Civ. P. 26(b)(1). Second, whether the testimony is ultimately relevant is a determination left to the district court. *See Comprehensive Habilitation Servs., Inv. v. Commerce Funding Corp.*, 240 F.R.D. 78, 83-84 (S.D.N.Y. 2006); *Lent v. Signature Truck Sys., Inc.*, No. 06-CV-569S, 2010 WL 1707998, at *3 (W.D.N.Y. Apr. 26, 2010).[8] This is especially true where, as here, the district court is very familiar with the various claims and defenses of the parties, having supervised the case for more than four years, including addressing numerous motions to dismiss and reconsider, a motion for class certification, and numerous discovery matters.

Notably, the Decision does not assert that any of the Witnesses lack personal knowledge regarding the events at issue, or that they will be unable to provide adequate testimony. *See Eugenia VI Venture Holdings, Ltd. v. Chabra*, No. 05 Civ. 5277, 2006 WL 1293118 (S.D.N.Y. May 10, 2006) (holding that defendant could not seek discovery from

[8] Moreover, while relevance is one factor a court may consider, it "is not the controlling factor in an undue burden analysis." *Aristocrat Leisure Ltd. v. Deutsche Bank Trust Co. Americas*, 262 F.R.D. 293, 300 (S.D.N.Y. 2009).

individual who had no personal knowledge). To the contrary, the Defendants served subpoenas only on those SEC personnel from each investigation or examination who have firsthand knowledge regarding how Madoff was able to carry out the fraud, and the lengths to which he went to conceal it. Defendants seek testimony regarding the Witnesses' personal knowledge of communications with third parties, including Madoff, other BLMIS employees, and individuals from Fairfield, in connection with the SEC's BLMIS investigations and examinations. Madoff's deception, and the Witnesses' firsthand knowledge thereof, is not only relevant, it is a critical issue in *Anwar*. *See Condit v. Dunne*, 225 F.R.D. 100, 105 (S.D.N.Y. 2004) ("Although not unlimited, relevance, for purposes of discovery, is an extremely broad concept.") (citations omitted).

This is not a case where the Defendants are seeking to elicit "expert" testimony regarding the SEC's practices with respect to broker-dealer or investment advisor examinations or investigations.[9] Rather, courts have required agency witnesses to testify where they had unique, firsthand knowledge of facts relevant to the case, which is the case here. *See In re U.S. Bioscience Sec. Litig.*, 150 F.R.D. 80 (E.D. Pa. 1993) (requiring FDA employees with firsthand factual knowledge to testify).

In asserting that the Witnesses' testimony is not relevant in *Anwar*, the Decision focuses on one line of inquiry suggested in Defendants' May 31 letter, related to the fact that Madoff told SEC investigators that he was no longer trading options as part of his split strike conversion strategy. (Ex. 6 at 4.) The Decision suggests that because the Defendants were aware that Madoff was purporting to continue to trade options on behalf of the Fairfield funds,

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9. The Decision's citation of, for example, *Moran v. Pfizer*, No. 99 civ. 9969, 2000 WL 1099884, at *3 (S.D.N.Y. Aug. 4, 2000), is therefore inapposite. In that case the court found that the plaintiff was "attempting to use the FDA Witnesses as a free source of expert testimony that is available to plaintiff elsewhere." *Id.*

Madoff could not have misled the Defendants as he misled the investigators. *Id.* The Decision misses the point, which is that for every audience, Madoff had a story, and for every story, Madoff had supporting facts, arguments and documents. Madoff's ability to conceal the fraud from even the most determined investigators and examiners is highly relevant to whether *the Defendants* could or should have uncovered Madoff's scheme.

Furthermore, the issue of Madoff's lies regarding options trading was only one example of what the Defendants seek to cover during the Witnesses' depositions. To clarify the scope of the subpoenas, the Defendants provided specific topics for proposed deponent Peter Lamore, who, as discussed above, spent more than two and a half months at BLMIS's offices, interacting with Madoff on a near-daily basis. (Even the fact that Madoff was the investigators' primary contact is relevant in *Anwar*, where the Defendants might have been met with a similar personal reception had they undertaken procedures at BLMIS.) During his time at BLMIS, Lamore made inquiries regarding many of the so-called "red flags" that the *Anwar* Plaintiffs now allege should have alerted the Defendants to the fact that something was amiss at BLMIS. For example, Lamore made inquiries regarding the consistency of the split-strike strategy's returns, Madoff's ability to time the market to generate positive returns, and Madoff's ability to enter and exit the split-strike strategy without affecting the market. (Ex. 5, Appendix A.) Even if, as the Decision asserts, the SEC had a different "focus" than the Defendants (Ex. 6 at 3), the Witnesses were still privy to details about BLMIS's operations. The Witnesses monitored BLMIS during several critical periods, questioned BLMIS regarding the "red flags," and still did not uncover Madoff's fraud.

Moreover, the proposed testimony is relevant because of the role that FGG, a named defendant in this action, played in the OIG's Investigation of the Failure of the SEC to

Uncover Bernard Madoff's Ponzi Scheme. Not only did the SEC communicate with FGG in its earlier examinations and investigations, but the OIG reached out to FGG in 2009 for an onsite examination and information requests. Having sought information, testimony and documents from FGG and its personnel in the past, the SEC cannot now protest that its actions have no relevance to this case.

In order to allow Defendants a full and fair opportunity to gather evidence to present their defenses, it is necessary to obtain the deposition testimony of the Witnesses regarding the outward-facing aspects of the SEC's examinations and investigations.

C. The Depositions Will Not Impose an Undue Burden on the SEC

The Decision notes that under Federal Rules of Civil Procedure 26 and 45, district courts consider whether discovery requests would impose an undue burden on the recipient, and further consider a number of factors relevant to the question of undue burden, including: whether the discovery is "unreasonably cumulative or duplicative"; whether the discovery sought is "obtainable from some other source that is more convenient, less burdensome, or less expensive"; and whether "the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. (Ex. 6 at 2-3 (quoting *Watts v. SEC*, 482 F.3d 501, 509 (D.C. Cir. 2007)).)

The discovery sought here is not "unreasonably cumulative or duplicative," nor is the Witnesses' testimony as to their interactions with Madoff, others at BLMIS, and Fairfield available from any other source. *See* Fed. R. Civ. P. 26. The Decision asserts that the information the Defendants seek is available in the OIG Report, as well as various transcripts and

other documents that the SEC has produced. The Decision does not address, however, Defendants' concerns regarding the admissibility of the OIG Report and other documents. Courts have noted that the potential inadmissibility of documents and prior testimony may be taken into account when considering whether to allow deposition testimony. *See Davis Enters. v. U.S. Env. Protection Agency*, 877 F.2d 1181, 1183 (3d Cir. 1989) (considering admissibility of documentary evidence in deciding whether district court abused its discretion in denying EPA depositions). Furthermore, the discovery sought here will significantly benefit the full and fair resolution of the *Anwar* case.

The Decision overstates the burden on the SEC of allowing the depositions. The Defendants requested depositions that are narrow in scope. In correspondence with the SEC, the Defendants listed specific topics about which each witness would be examined. (Ex. 4, Appendix A; Ex. 5, Appendix A.) Such targeted discovery, propounded in advance on a limited number of deponents, regarding specified areas of examination, is not unduly burdensome. *See Jones v. McMahon*, No. 5:98-CV-0374, 2007 WL 2027910, at *17 (N.D.N.Y. July 11, 2007) (permitting nonparty depositions of 19 of 32 specifically identified non-party New York State Troopers).[10] Given the narrow scope of the requested testimony, the Decision's citation to *Moore v. Amour Pharmaceutical Co.,* 129 F.R.D. 551 (N.D. Ga. 1990), (Ex. 6 at 3 n.2), is inapposite. The *Moore* decision was appealed to the Eleventh Circuit, which upheld the district court's grant of a motion to quash subpoenas for the depositions of two CDC doctors. 927 F.2d 1194, 1198 (11th Cir. 1991). The doctors were central to the CDC's AIDS research at the height

10. Courts have previously ordered the SEC to comply with subpoenas. *United States v. Peitz*, No. 01 CR 852, 2002 WL 453601, at *5 (N.D. Ill. March 22, 2002) (denying the SEC's motion to quash a subpoenas duces tecum served on SEC attorneys for documents where the SEC had information pertinent to criminal allegations against defendant.)

of the AIDS epidemic, and the court noted that the subject matter about which the doctors' testimony was sought was overbroad, such that allowing their depositions "would be similar to asking a Federal Aviation Administration employee, in an airline crash case, to detail the evolution of airline safety since the Wright brothers." *Id.* This is hardly the case here.

Moreover, the fact that agency attorneys would have to prepare the Witnesses for their deposition does not constitute an undue burden. *See Fagan v. District of Columbia*, 136 F.R.D. 5, 7 (D.D.C. 1991) ("The mere fact that discovery requires work and may be time consuming is not sufficient to establish undue burden."); *In re Shopping Carts Antitrust Litig.*, 95 F.R.D. 299, 308 (S.D.N.Y. 1982) (incurring some burden or expense is "not a valid objection where the information sought is relevant and material") (citation omitted).

As the Decision acknowledges, fewer than half of the Witnesses still work at the SEC. Defendants have expressed willingness to accommodate the Witnesses' schedules so that the depositions are as minimally disruptive as possible.

Furthermore, the Defendants offered to reduce the number of depositions from nine to four in order to minimize any impact on the Commission's resources and operations and avoid taking any cumulative or duplicative testimony. The reduction in the number of depositions would reduce any burden on the agency in preparing the Witnesses, would mitigate any potential impact on the SEC's ongoing operations, and would decrease the likelihood that any of the testimony would be cumulative. Such a compromise is the proper approach to minimizing the potential burden on the agency, rather than refusing to allow any depositions at all. *See Bridgeport Music Inc. v. UMG Recordings, Inc.*, No. 05 Civ. 6430, at *3 (VM)(JCF), 2007 WL 4410405 (S.D.N.Y. Dec. 17, 2007) ("[D]iscovery should not simply be denied on the ground that the person or entity from whom it is sought is not a party to the action. . . A better

approach is for the court to take steps to relieve a nonparty of the burden of compliance even when such accommodations might not be provided to a party.") (citation omitted).

While courts recognize the interest of agencies to protect their employees, this is not the sort of case that will lead to a flood of private litigants seeking testimony from SEC employees. The Decision gives no indication that the SEC has been inundated with requests for its employees to testify in Madoff-related matters. Notably, the SEC has successfully rebuffed attempts by private litigants to sue it for its failure to uncover Madoff's fraud. *See Molchatsky v. United States*, 713 F.3d 159, 162 (2d Cir. 2013) (holding that the discretionary function exception to the Federal Torts Claims Act barred investor's claims against the government based on the SEC's failure to discover Madoff's Ponzi scheme); *Dichter–Mad Family Partners, LLP v. United States*, 709 F.3d 749 (9th Cir. 2013), *petition for cert. filed*, May 21, 2013 (No. 12-1391); *Donahue v. United States*, 870 F. Supp. 2d 97 (D.D.C. 2012) (same); *Baer v. United States*, No. 11–1277, 2011 WL 6131789 (D.N.J. Dec. 8, 2011), *mot. to amend denied*, 2012 WL 296120 (D.N.J Feb. 1, 2012). Nor would allowing testimony to be taken in *Anwar* set a precedent that would force the Commission to allow testimony to be taken in all manner of other matters. *Anwar* is unique in that it involves the world's largest-ever Ponzi scheme, and BLMIS's single largest client by far. Allowing the Defendants to depose the Witnesses will not create precedent for depositions to be taken in future cases. Rarely, if ever, will the SEC staff have had such frequent, intimate contact with the mastermind of a fraud.

Here, unlike in the vast majority of cases, the SEC's BLMIS investigations and examinations were chronicled in a 400 page report issued by the Commission Office of the Inspector General that was based on 140 depositions and interviews of 122 individuals.

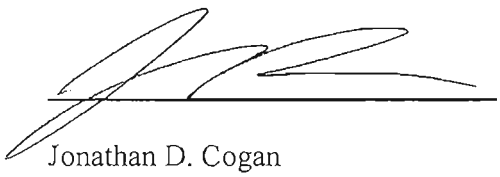
Finally, the Decision does not take into account the amount in controversy in *Anwar*. Plaintiffs allege that their class-wide losses amount to more than $5 billion. (Pls.' Class Cert. Mem. at 2, 1/11/12, ECF No. 776.) The importance of the issues at stake necessitate full discovery to explore Defendants' defenses and gain first-hand testimony regarding the BLMIS operations.[11]

III. CONCLUSION

For the above reasons, Defendants respectfully request that the SEC reverse the Decision and authorize the Witnesses to provide deposition testimony.

Dated: June 21, 2013

Respectfully Submitted,



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Counsel for GlobeOp Financial Services LLC

11. *See Lent v. Signature Truck Systems, Inc.*, No. 06-CV-569S, 2010 WL 1707998 (W.D.N.Y. April 26, 2010), at *4 (allowing additional nonparty deposition in light of the complex issues, amount in controversy, and multiple defendants in the case and the importance of the proposed discovery in resolving issues related to plaintiffs' theory of liability).

CERTIFICATE OF SERVICE

I, Justin Sommers, counsel for GlobeOp Financial Services LLC, hereby certify that on June 21, 2013, I filed the foregoing Petition for Review with the Secretary of the United States Securities and Exchange Commission by facsimile ((202) 772-9324) and Federal Express. A copy was also served on Assistant General Counsel Richard M. Humes via facsimile, Federal Express, and electronic mail.

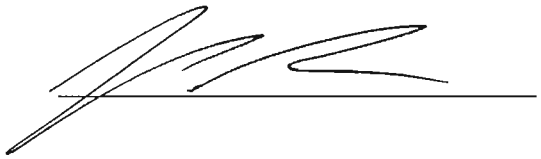

EXHIBIT 1

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Pasha S. Anwar, et al.,
Plaintiff
v.
Fairfield Greenwich Limited, et al.
Defendant

Civil Action No. 09-cv-118 (VM)

(If the action is pending in another district, state where:)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Demetrios Vasilakis
Discovery Capital Management LLC, 20 Marshall Street, Suite 310, South Norwalk, CT 06854

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
Kirkland & Ellis LLP 601 Lexington Avenue New York, NY 10022	03/15/2013 9:30 am

The deposition will be recorded by this method: both stenographically and video recorded

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 2/27/13

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Citco Fund Services (Europe) B.V.; Citco (Canada) Inc., who issues or requests this subpoena, are:

Amanda M. McGovern
Brown and Heller, P.A., 2 South Biscayne Boulevard, Suite 1570, Miami, Florida 33131
Telephone: (305) 358-3580 E-mail: amcgovern@bhlawpa.com

Civil Action No. 09-cv-118 (VM)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____ _____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Pasha S. Anwar, et al.,
Plaintiff
v.
Fairfield Greenwich Limited, et al.
Defendant

Civil Action No. 09-cv-118 (VM)

(If the action is pending in another district, state where:

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Eric Swanson
BATS Global Markets, Inc.,14 Wall Street, Suite 4E, New York, NY 10005

☑ *Testimony:* YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
Kirkland & Ellis LLP 601 Lexington Avenue New York, NY 10022	03/13/2013 9:30 am

The deposition will be recorded by this method: both stenographically and video recorded

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 2/27/13

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Citco Fund Services (Europe) B.V.; Citco (Canada) Inc., who issues or requests this subpoena, are:

Amanda M. McGovern
Brown and Heller, P.A., 2 South Biscayne Boulevard, Suite 1570, Miami, Florida 33131
Telephone: (305) 358-3580 E-mail: amcgovern@bhlawpa.com

Civil Action No. 09-cv-118 (VM)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____ _____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

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(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

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(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Pasha S. Anwar, et al., *Plaintiff*

v.

Fairfield Greenwich Limited, et al., *Defendant*

Civil Action No. 09-cv-118 (VM)

(If the action is pending in another district, state where:)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: John Gentile
Ascendant Compliance Management, 194 Main Street, Salisbury, CT 06068

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
Brandon Smith Reporting Service, LLC 249 Pearl Street, First Floor Hartford, CT 06103	03/11/2013 9:30 am

The deposition will be recorded by this method: both stenographically and video recorded

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 2/27/13

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Citco Fund Services (Europe) B.V.; Citco (Canada) Inc., who issues or requests this subpoena, are:

Amanda M. McGovern
Brown and Heller, P.A., 2 South Biscayne Boulevard, Suite 1570, Miami, Florida 33131
Telephone: (305) 358-3580 E-mail: amcgovern@bhlawpa.com

Civil Action No. 09-cv-118 (VM)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____ _____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

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(i) disclosing a trade secret or other confidential research, development, or commercial information;

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(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

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(i) expressly make the claim; and

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(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

AO 88A (Rev. 06/09) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Anwar, et al., *Plaintiff*	)	
v.	)	Civil Action No. 09 Civ. 0118
Fairfield Greenwich Limited, et al. *Defendant*	)	(If the action is pending in another district, state where:)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: John McCarthy
Getco LLC, 3580 N Orleans, 3rd Floor, South Chicago, IL 60654

☑ *Testimony:* YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
TSG Reporting 231 N. Clark Street, 5th Floor Chicago, IL 60654	03/14/2013 9:30 am

The deposition will be recorded by this method: Stenograph, DVD or videotape

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 2/27/13

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk *Attorney's signature*

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Citco Fund Services (Europe) B.V.; Citco (Canada) Inc., who issues or requests this subpoena, are:

Amanda McGovern
Brown and Heller P.A. 2 South Biscayne Boulevard, 15th Floor Miami, FL 33131
Telephone: (305) 358-3580 E-mail: amcgovern@bhlawpa.com

Civil Action No. 09 Civ. 0118

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____ _____

Server's signature

_____

Printed name and title

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Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

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(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

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(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

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(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

AO 88A (Rev. 06/09) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Pasha S. Anwar, et al. *Plaintiff* v. Fairfield Greenwich Limited, et al. *Defendant*	)	Civil Action No. 09-cv-118 (VM) (If the action is pending in another district, state where:)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Mark Donohue, San Francisco Regional Office, U.S. Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
TSG Reporting 555 California Street, 3rd Floor San Francisco, CA 94104	03/11/2013 9:30 am

The deposition will be recorded by this method: both stenographically and video recorded

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 2/27/13

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk *Attorney's signature*

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Citco Fund Services (Europe) B.V.; Citco (Canada) Inc., who issues or requests this subpoena, are:

Amanda M. McGovern
Brown and Heller, P.A., 2 South Biscayne Boulevard, Suite 1570, Miami, Florida 33131
Telephone: (305) 358-3580 E-mail: amcgovern@bhlawpa.com

Civil Action No. 09-cv-118 (VM)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____ _____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Pasha S. Anwar, et al., *Plaintiff*

v.

Fairfield Greenwich Limited, et al., *Defendant*

Civil Action No. 09-cv-118 (VM)

(If the action is pending in another district, state where:)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Meaghan Cheung, c/o Richard D. Weinberg, Esq., Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer, 565 Fifth Avenue, New York, New York 10017

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: Kirkland & Ellis LLP 601 Lexington Avenue New York, NY 10022	Date and Time: 03/18/2013 9:30 am

The deposition will be recorded by this method: both stenographically and video recorded

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 2/27/13

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Citco Fund Services (Europe) B.V.; Citco (Canada) Inc., who issues or requests this subpoena, are:

Amanda M. McGovern
Brown and Heller, P.A., 2 South Biscayne Boulevard, Suite 1570, Miami, Florida 33131
Telephone: (305) 358-3580 E-mail: amcgovern@bhlawpa.com

Civil Action No. 09-cv-118 (VM)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____ _____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

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(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

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AO 88A (Rev. 06/09) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Pasha S. Anwar, et al.,
Plaintiff
v.
Fairfield Greenwich Limited, et al.
Defendant

Civil Action No. 09-cv-118 (VM)

(If the action is pending in another district, state where:)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Peter Lamore, New York Regional Office, U.S. Securities and Exchange Commission, 3 World Financial Center, Suite 400, New York, NY 10281

☑ *Testimony*: **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
Kirkland & Ellis LLP 601 Lexington Avenue New York, NY 10022	03/11/2013 9:30 am

The deposition will be recorded by this method: both stenographically and video recorded

☐ *Production*: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 2/27/13

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Citco Fund Services (Europe) B.V.; Citco (Canada) Inc, who issues or requests this subpoena, are:

Amanda M. McGovern
Brown and Heller, P.A., 2 South Biscayne Boulevard, Suite 1570, Miami, Florida 33131
Telephone. (305) 358-3580 E-mail: amcgovern@bhlawpa.com

Civil Action No. 09-cv-118 (VM)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____ _____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

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(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

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(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

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(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

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(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

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(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

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(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Pasha S. Anwar, et al.,
Plaintiff
v.
Fairfield Greenwich Limited, et al.
Defendant

Civil Action No. 09-cv-118 (VM)

(If the action is pending in another district, state where:

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Simonah Suh, New York Regional Office, U.S. Securities and Exchange Commission, 3 World Financial Center, Suite 400, New York, NY 10281

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
Kirkland & Ellis LLP 601 Lexington Avenue New York, NY 10022	03/14/2013 9:30 am

The deposition will be recorded by this method: both stenographically and video recorded

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 2/27/13

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Citco Fund Services (Europe) B.V.; Citco (Canada) Inc., who issues or requests this subpoena, are:

Amanda M. McGovern
Brown and Heller, P.A., 2 South Biscayne Boulevard, Suite 1570, Miami, Florida 33131
Telephone: (305) 358-3580 E-mail: amcgovern@bhlawpa.com

Civil Action No. 09-cv-118 (VM)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____ _____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Pasha S. Anwar, et al., *Plaintiff* v. Fairfield Greenwich Limited, et al. *Defendant*	)	Civil Action No. 09-cv-118 (VM) (If the action is pending in another district, state where:)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: William Ostrow, New York Regional Office, U.S. Securities and Exchange Commission, 3 World Financial Center, Suite 400, New York, NY 10281

☑ *Testimony:* YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
Kirkland & Ellis LLP 601 Lexington Avenue New York, NY 10022	03/12/2013 9:30 am

The deposition will be recorded by this method: both stenographically and video recorded

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 2/27/13

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk *Attorney's signature*

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Citco Fund Services (Europe) B.V.; Citco (Canada) Inc., who issues or requests this subpoena, are:

Amanda M. McGovern
Brown and Heller, P.A., 2 South Biscayne Boulevard, Suite 1570, Miami, Florida 33131
Telephone: (305) 358-3580 E-mail: amcgovern@bhlawpa.com

Civil Action No. 09-cv-118 (VM)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____ _____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

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(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

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(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

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(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

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(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

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EXHIBIT 2

BROWN AND HELLER, P.A.
ATTORNEYS AT LAW
ONE BISCAYNE TOWER • 15TH FLOOR
2 SOUTH BISCAYNE BOULEVARD
MIAMI, FLORIDA 33131

AMANDA McGOVERN

TELEPHONE (305) 358-3580
FAX (305) 374-1756
E-MAIL: amcgovern@bhlawpa.com

February 27, 2013

Via Federal Express

Geoffrey F. Aronow, Esq.
General Counsel
U. S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-8549

Re: *Anwar v. Fairfield Greenwich Limited*, No. 09 Civ. 00118 (VM)(FM) (S.D.N.Y.)

Dear Mr. Aronow:

We write on behalf of The Citco Group Limited and related entities,[1] PricewaterhouseCoopers Accountants N.V. ("PwC Netherlands"), PricewaterhouseCoopers LLP ("PwC Canada"), and GlobeOp Financial Services LLC (collectively, "Defendants"), in the above-referenced, Bernard L. Madoff ("Madoff") Ponzi scheme-related litigation. Defendants seek to take the depositions of U.S. Securities and Exchange Commission ("SEC") employees Simonah Suh, Meaghan Cheung, Peter Lamore, Mark Donohue, John Gentile, John McCarthy, William Ostrow, Eric Swanson, and Demetrios Vasilakis (the "SEC Witnesses"), and enclose herewith Rule 45 deposition subpoenas. We look forward to discussing with you whether your office is willing to accept service of the subpoenas, as well as the authorization and scheduling of the requested depositions. We hope that the following summary of the testimony we are seeking and its relevance in the above-referenced action will assist in the evaluation of the subpoenas in accordance with the SEC's *Touhy* regulations, 17 C.F.R. § 200.735(b).[2]

The testimony of the subpoenaed individuals is relevant to the core claims and defenses in the *Anwar* action. Two related actions also involving certain Fairfield funds are pending in New York state court, styled *Walker, Truesdell, Roth & Assocs., Inc. v. GlobeOp Fin. Servs. LLC, et*

1. The Citco Group Limited, Citco Fund Services (Europe) B.V., Citco (Canada) Inc., Citco Global Custody N.V., Citco Fund Services (Bermuda) Limited, and Citco Bank Nederland N.V. Dublin Branch (collectively, the "Citco Defendants").

2. United States ex rel. Touhy v. Regan, 340 U.S. 462 (1951).

al., Index Nos. 600469/2009, 600498/2009 (the "Walker Actions"). Defendants PwC Canada and the Citco Defendants wish to take the depositions of the SEC Witnesses in the Walker Actions as well, and through this letter also request authorization to do so. This would avoid the need for duplicative depositions.

The *Anwar* Plaintiffs were investors in four hedge funds managed by certain individuals and entities associated with Fairfield Greenwich Group: Fairfield Sentry Limited, Fairfield Sigma Limited, Greenwich Sentry Partners, L.P. and Greenwich Sentry, L.P. (collectively, the "Funds"). These plaintiffs have asserted various federal securities and state law claims against Defendants stemming from the fraud perpetrated by Madoff and his investment company, Bernard L. Madoff Investment Securities LLC ("BLMIS"). Plaintiffs' Second Amended Consolidated Complaint (ECF No. 273 (Sept. 29, 2009)) (the "SCAC" or "Complaint") (selected excerpts attached as Exhibit 1) alleges that Madoff, through BLMIS, "fraudulently distributed new investors' assets to prior investors to create the illusion of profits," that BLMIS "account statements described purported trading activity in securities holdings" that "were wholly fictitious," and that Madoff had "made no securities trades for years." (SCAC ¶ 166). The Complaint also alleges that PwC Netherlands, PwC Canada and other defendants failed to properly test BLMIS's internal controls and scrutinize information provided by Madoff. (*See, e.g.*, SCAC ¶¶ 299-301.)

The Complaint references one of the several investigations and examinations of Madoff and BLMIS that the SEC conducted between 1992 and the revelation of Madoff's Ponzi scheme in December 2008.[3] In particular, the Complaint refers to the fact that SEC personnel spoke not only with Madoff in the course of the SEC's investigation, but also with personnel from Fairfield Greenwich Group. (SCAC ¶ 234.) We are seeking fact-related testimony regarding the events that prompted the investigations and examinations of Madoff and BLMIS, the steps that the SEC took in conducting these examinations, and the communications between the SEC and Madoff, BLMIS employees, BLMIS investors, and third parties, that were made in the course of those investigations and examinations.

Defendants are not seeking privileged information, work product, or information pertaining to the SEC's deliberative processes. As the extensive OIG Report underscores, there is a compelling public interest in having the parameters of Madoff's fraud fully explored and understood, including the role of the SEC's investigations and examinations, and the role other parties may have played in shielding the fraud from the SEC and the public at large.

Based on documents produced by the parties to the *Anwar* action, Defendants have grounds to believe that the below SEC Witnesses have knowledge of facts that are directly relevant to the issues in this litigation for, among other reasons, the following:

3. Accounts of the SEC's actions are detailed in the public version of the SEC Office of Inspector General report "Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme." Report No. OIG-509 (the "Report").

- Simona Suh, staff attorney, Division of Enforcement, participated in an investigation of Markopolos's 2005 submission to the SEC regarding BLMIS and Madoff, and an investigation of BLMIS's DTC accounts. In that regard, she sent an inquiry letter to the general counsel of Fairfield asking for documents pertaining to one or more of the Funds.

- Meaghan Chung, Branch Chief, Division of Enforcement, Northeast Regional Office, also participated in this investigation, and engaged in a telephone interview with Fairfield employees Mark McKeefry, Amit Vijayvergiya and Anthony Dell'Arena. In addition, Chung has factual knowledge of the SEC's inquiries about (i) Fairfield's transparency into Madoff and the nature of the relationship between Fairfield and Madoff; (ii) the Split Strike Conversion Strategy; (iii) the methodology behind Madoff's execution of the trades; (iv) Fairfield's monitoring process; and (v) Fairfield's conversations with Madoff regarding the SEC inquiry.

- Peter Lamore, Securities Compliance Examiner, Northeast Regional Office ("NERO"), was a member of the NERO investigation team and participated in the on-site BLMIS visit and drafting the final memorandum regarding that visit. Lamore is also believed to have had discussions about Madoff with Simona Suh, which occurred when they realized that both of their respective divisions were conducting Madoff investigations.

- William Ostrow, Senior Compliance Examiner, New York Regional Office, participated in an examination of Madoff in 2004 after NERO employees came up with questions about Madoff through their work with Renaissance Technologies, a hedge fund management company. While conducting a routine examination of Renaissance, NERO staff discovered emails from November and December 2003 that expressed internal Renaissance concerns about Madoff's operations. Ostrow's testimony is sought with respect to his participation in that examination, including work on-site at BLMIS in April 2005 (along with Peter Lamore), and the final examination report summarizing his meetings with Madoff, including how Madoff often changed his story about his advisory business.

- Mark Donohue, Branch Chief, Office of Compliance Inspections and Examinations ("OCIE"), participated in the OCIE's investigation, and has relevant testimony on issues relating to his examination of whether Madoff was acting as an investment advisor, and his role in taking over primary responsibility for the examination in 2004.

- John McCarthy, Associate Director, OCIE, was a part of the OCIE's attorneys-only team who investigated Madoff in 2003-2004. McCarthy's testimony is sought with respect to the OCIE's investigation and issues contained in the 2001 Barron's article profiling Madoff, which the OCIE had received.

- Eric Swanson, Assistant Director, OCIE, also participated in an investigation of Madoff and BLMIS, and has factual knowledge regarding his participation in the OCIE's investigation, including his information requests to Madoff.

- John Gentile, former Branch Chief, Division of Market Regulation, led a 1992 Madoff cause examination, which was conducted as a result of the Avellino & Bienes investigation, and has personal knowledge regarding that investigation.

- Demetrios Vasilakis, former Compliance Examiner and Branch Chief, Northeast Regional Office, was part of the examination team from the Broker-Dealer Enforcement Group for the Avellino & Bienes investigation and has relevant factual testimony regarding this examination.

We are available to discuss this matter at your convenience or to provide any additional information that would be of assistance. Of note, however, per order of the Court, fact discovery in the *Anwar* action must be completed by June 30, 2013, and we would therefore like to schedule and proceed with the depositions as soon as possible.

Very truly yours,

AMANDA M. MCGOVERN

Enclosures

cc: All *Anwar* Counsel
Robert Wallner, Esq.

EXHIBIT 3

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
GENERAL COUNSEL

March 4, 2013

VIA Email and U.S. Mail

Amanda McGovern, Esq.
Brown and Heller, P.A.
One Biscayne Tower
15th Floor
Miami, FL 33131

Re: Subpoenas issued in *Anwar v. Fairfield Greenwich Limited*, No. 09 Civ. 00118 (VM)(FM) (S.D.N.Y.)

Dear Ms. McGovern:

This letter responds to your letter of February 27, 2013 to Geoffrey F. Aronow. Your letter forwards copies of subpoenas issued by Defendants in the above-captioned district court proceeding directed towards ten current and former staff members of the United States Securities and Exchange Commission ("Commission" or "SEC"). Neither the Commission nor the subpoenaed individuals are parties to this private civil litigation.

In considering the subpoenas, we begin with the understanding that decisional precedent from federal courts recognizes that parties seeking testimony or documents from a governmental agency in litigation in which the agency is not a party must follow agency rules requiring prior agency authorization for the agency's employees to respond to subpoenas. In *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), the Supreme Court concluded that government employees may not be compelled to respond to a subpoena when the relevant agency has a regulation that vests in the agency, and withdraws from the employee, the authority to respond to the subpoena. *See* 340 U.S. 462, 467-69 (1951). *Touhy* and its progeny establish that a litigant who has issued a subpoena seeking testimony or documents from an agency must first exhaust the requirements prescribed under applicable agency regulations.

Your letter correctly notes that the Commission has adopted its own *Touhy* regulation governing authorization to produce agency materials, or to allow employees to offer testimony, in response to a subpoena. Commission regulations state that any Commission employee "who is served with a subpoena requiring the disclosure of confidential or non-public information or documents shall * * * decline to disclose the information or produce the documents called for" unless authorized to do so by the Commission's Office of General Counsel. 17 C.F.R. 200.735-

3(b)(7)(ii). *See also In re: SEC ex. rel. Glotzer and Slansky,* 374 F.3d 184, 189 (2d Cir. 2004).[1] Accordingly, authorization from the Commission's Office of General Counsel is a prerequisite to the disclosure of confidential or non-public information by members of the Commission staff. In deciding whether to authorize such testimony, the General Counsel or his delegatee considers "the desirability in the public interest of making available such information," *id.*, including whether it would vitiate applicable Commission privileges and/or impose undue harm, burden, or expense on the witness or the Commission. *See* Fed. R. Civ. P. 30 and 45(c).

Your letter asserts that "[D]efendants are not seeking privileged information, work product, or information pertaining to the SEC's deliberative processes" and that the current and former Commission staff members who have been subpoenaed "have knowledge of facts that are directly relevant to the issues" involved in this matter. In fact, however, the brief and very general descriptions of the matters you intend to question the deponents about set forth in your letter undermine this representation. They do not explain why you believe the deponents have information relevant to your litigation, and they indicate that current and former staff members will be questioned about privileged matters. For example, your letter indicates that Peter Lamore will be questioned about any "discussions about Madoff with Simona Suh, which occurred when they realized that both of their respective divisions were conducting Madoff investigations." Similarly, your letter indicates that you intend to question Mark Donohue on "issues relating to his examination of whether Madoff was acting as an investment advisor, and his role in taking over primary responsibility for the examination in 2004." The descriptions provided for other staff members raise similar, serious concerns that the scope of the intended examinations will not bear on matters relevant to your litigation and will necessarily seek to elicit testimony protected from disclosure by various governmental privileges.

We ask that you provide us with additional information to clarify the intended scope of the testimony you seek from these individuals and its anticipated relevance to your litigation. In particular, we request that you set forth in writing the specific subject areas you intend to ask the witnesses. You are also expected to explain how that testimony would not vitiate applicable Commission privileges, including the law enforcement, deliberative process, and attorney-client privileges, as well as the attorney work product doctrine. Once we have received your response, the Office of General Counsel will be in a position to evaluate whether the current and former staff members will be authorized to testify.

---

[1] Pursuant to 17 C.F.R. 200.30-14(f), the Commission has delegated its authority to the General Counsel "to approve * * * the production of non-privileged documents, when validly subpoenaed" as well as to "assert governmental privileges on behalf of the Commission * * * in response to third party subpoenas."

Because we have not yet authorized any testimony, we will be instructing each subpoenaed person not to appear at the time and place specified in the subpoenas. If the Office of General Counsel authorizes any testimony, we will work with you and the deponents to find suitable dates. We can resolve any remaining service issues at that time.

Please call me at (202) 551-5149 if you have any questions.

Very truly yours,

Melinda Hardy
Assistant General Counsel

EXHIBIT 4

KOBRE & KIM LLP

800 THIRD AVENUE
NEW YORK, NEW YORK 10022
WWW.KOBREKIM.COM

TEL +1 212 488 1200
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NEW YORK
LONDON
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WASHINGTON DC
MIAMI
CAYMAN ISLANDS
BVI

April 25, 2013

VIA FEDERAL EXPRESS

Melinda Hardy, Esq.
Assistant General Counsel
Office of General Counsel
United States Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549

Re: Subpoenas issued in *Anwar v. Fairfield Greenwich Limited*
No. 09 Civ. 00118 (VM)(FM) (S.D.N.Y.)

Dear Ms. Hardy:

On behalf of GlobeOp Financial Services LLC ("GlobeOp"), PricewaterhouseCoopers Accountants N.V. ("PwC Netherlands"), PricewaterhouseCoopers LLP ("PwC Canada"), and The Citco Group Limited and related entities ("Citco") (collectively, "Defendants"), we write in response to your March 4, 2013 letter to Amanda McGovern.[1] Pursuant to the Commission's request, we set forth below additional information regarding the requested testimony; describe the testimony's relevance to the *Anwar* litigation; and explain why the anticipated testimony does not vitiate any applicable privilege.

I. Substance and Relevance of the Testimony

The Defendants are not seeking testimony regarding internal SEC deliberations or communications regarding the Bernard L. Madoff Investment Securities ("BLMIS") or Bernard Madoff ("Madoff") investigations and examinations. Rather, Defendants seek facts regarding the outward-facing aspects of those investigations and examinations, such as the dates, times and substance of communications with third parties. As described in the publicly available version of the SEC Office of Inspector General's report, "Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme," Report No. OIG-509 (the "OIG Report"), each of the

1 Subsequent to Ms. McGovern's February 27, 2013 letter to the Commission's Office of General Counsel, Paul, Weiss, Rifkind, Wharton & Garrison LLP replaced Brown & Heller, P.A. as counsel for the Citco Defendants. Going forward, undersigned counsel will serve as the primary point of contact for discussions pertaining to the requested testimony.

witnesses identified in our February 27, 2013 letter (the "Witnesses") had direct contact with Madoff, BLMIS, individuals from the Fairfield Greenwich Group ("FGG"), and/or other third parties in connection with the investigations or examinations. Those contacts and communications are central to many of the claims and defenses in the *Anwar* litigation, and it is the details of those contacts and communications that Defendants are seeking.[2]

The *Anwar* Plaintiffs have put the SEC's investigations at issue in this case. For example, the *Anwar* Plaintiffs' Second Consolidated Amended Complaint (the "SCAC" or "Complaint") makes specific reference to one of the SEC's BLMIS investigations, as well as to interviews certain Witnesses conducted with individuals from FGG. The Complaint alleges that certain "Fairfield Defendants sought and followed Madoff's instructions on how to approach their upcoming [SEC] testimony," and that "Madoff ... instruct[ed] the Fairfield Defendants in what to say and what not to say to the SEC." SCAC ¶ 234. The Complaint alleges that the Fairfield Defendants thereby "aided Madoff in deceiving the SEC." *Id.* The Complaint further alleges that this deception had ripple effects beyond the SEC investigation, as "the Fairfield Defendants ... cit[ed] to the inconclusive result of the SEC investigation in their public statements to Fund investors as proof that Madoff and B[L]MIS could be trusted as [a] faithful manager and custodian of the Funds' assets." *Id.* The Witnesses have direct knowledge of what Madoff and FGG employees said to the SEC, and the Witnesses' testimony regarding that knowledge is important to understanding the nature and extent of the deception perpetrated by Madoff, and the involvement therein by the FGG, whose conduct is of critical importance to the Defendants in defending against the Plaintiffs' claims and assessing comparative fault.

The Complaint also alleges that additional diligence by the Defendants regarding Madoff and/or site visits to BLMIS would have uncovered Madoff's fraud. *See, e.g., id.* at ¶¶ 301, 302. The Witnesses were key members of the SEC teams that conducted the BLMIS investigations, and they, at various times, requested, received and reviewed BLMIS records and documents. Many of the Witnesses personally interviewed Madoff, and some spent significant periods on-site at BLMIS. Consequently, the Witnesses' personal knowledge is also a unique source of evidence relevant to evaluating the Plaintiffs' allegations regarding the potential effectiveness of the additional diligence that the Defendants allegedly should have performed.

Details regarding the testimony the Defendants hope to elicit from each of the Witnesses is set forth in Appendix A.

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2 The standard for relevance under the Federal Rules of Evidence is "lenient," as the evidence sought "need not conclusively prove the ultimate fact in issue, but only have a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Weinstein's Federal Evidence § 401.04. As described below, the Witnesses' anticipated testimony more than meets this standard. Although the OIG Report is also certainly relevant, it is by no means assured that it will be admitted into evidence at trial.

II. This Testimony the Defendants Seek is in the Public Interest and Does Not Vitiate Any Commission Privilege

The testimony Defendants seek is plainly in the public interest. In *Anwar*, Judge Marrero has described Madoff's fraud as "the largest financial fraud yet witnessed in the record of human wrongdoing and tragedy." *See Anwar v. Fairfield Greenwich Limited*, 728 F. Supp. 2d 372, 412 (S.D.N.Y. 2010). The Witnesses clearly have firsthand knowledge regarding the lengths to which Madoff went to conceal his massive fraud, a subject matter of great importance to the *Anwar* litigation and to the public at large.[3]

It is equally clear that the Fairfield Greenwich Group played a unique role in Madoff's incomparable fraud. The *Anwar* litigation was brought by investors in several Fairfield Greenwich Group funds, including the Fairfield Sentry Fund, which directed more than $5 billion into BLMIS accounts. Fairfield Sentry was not just any Madoff investor: at the time Madoff's fraud was disclosed, Fairfield Sentry was Madoff's *largest* investor. Given the uniqueness of the Madoff fraud, and the Fairfield Greenwich Group's unique role with respect to that fraud, the Witnesses' testimony is of significant public importance, and the provision of testimony by the Witnesses here is unlikely to set precedent for determinations regarding the availability of Commission employees in the future.

Moreover, the Witnesses' testimony concerning the outward-facing aspects of their BLMIS investigations will not vitiate any applicable Commission privilege, be it the attorney-client, attorney work-product, law enforcement, or deliberative process privilege.

The attorney-client privilege, which protects communications between attorneys and their clients for the purpose of obtaining or providing legal advice, has no application here. *See United States v. Mejia*, 655 F.3d 126, 132 (2d Cir. 2011), *cert. denied*, 132 S. Ct. 533 (2011). The privilege remains intact only so long as the communications are kept confidential, but the questions we anticipate asking will be primarily aimed at communications the Witnesses had with third parties and subject matters already within the public domain, and thus, clearly do not invade any attorney-client privilege. *See Upjohn Co. v. United States*, 449 U.S. 383, 395 (1981) ("The privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney.").

The work-product doctrine protects an attorney's mental impressions and materials collected or prepared in anticipation of litigation, but the "work product doctrine does not extend to facts, in most instances. Generally, facts should be freely discoverable." *Henry v. Champlain Enters., Inc.*, 212 F.R.D. 73, 87 (N.D.N.Y. 2011) (citing *In re Savitt/Adler Litig.*, 176 F.R.D. 44, 48 (N.D.N.Y. 1997)). There is no "carte blanche rule in which any facts ascertained by the

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3 Indeed, the United States Congress described Madoff's fraud as "a case study to guide the work of the Financial Services Committee in reshaping and reforming our Nation's financial services regulatory system." *Assessing the Madoff Ponzi Scheme and Regulatory Failures: Hearing Before the Subcomm. on Capital Markets, Insurance, and Government Sponsored Enterprises of the H. Comm. on Financial Services*, 111th Cong. (2009) (statement of Rep. Paul E. Knajorski, Chairman, Subcomm. on Capital Mkts., Ins., and Gov't Sponsored Enters. of the H. Comm. on Fin. Servs.).

efforts of the attorney cannot be revealed," *Henry*, 212 F.R.D. at 91, and any concern regarding revealing an attorney's mental impressions and processes "must be real and not speculative." *Id.* at 87-88 (citing *Gould Inc. v. Mitsui Mining & Smelting Co.*, 825 F.2d 676, 680 (2d Cir. 1987)). As detailed above and in Appendix A, Defendants seek to question the Witnesses regarding the facts learned through the investigations, not the Witnesses' mental impressions regarding those facts, or the processes by which the Witnesses decided to obtain those facts.[4] To the extent that a particular question posed during any of the requested depositions calls for testimony that is immune from discovery under the work product doctrine, the Commission will have the opportunity to raise an objection during the deposition, and, if necessary, instruct the witness not to answer.

The deliberative process privilege, or executive privilege, is a "sub-species" of the work product doctrine, and it is likewise inapplicable. *Tigue v. U.S. Dep't of Justice*, 312 F.3d 70, 76 (2d Cir. 2002). The privilege protects the internal processes of executive agencies to promote candid discussion within and between agencies, furthering the agencies' ability to perform their missions. *Nat'l Council of La Raza v. Dep't of Justice*, 411 F.3d 350, 356 (2d Cir. 2005). The privilege protects "recommendations, draft documents, proposals, suggestions, and other subjective documents ... [that] bear on the formulation or exercise of policy-oriented judgment." *Grand Cent. P'ship, Inc. v. Cuomo*, 166 F.3d 473, 482 (2d Cir. 1999). The information we seek here does not relate to the "formulation or exercise of policy-oriented judgment." In addition, the deliberative process privilege "does not ... as a general matter, cover 'purely factual' material." *Id.* (quoting *Hopkins v. U.S. Dep't of Housing & Urban Dev.*, 929 F.2d 81, 85 (2d Cir. 1991)). As discussed above, the Defendants are not seeking testimony from the Witnesses regarding internal or intra-agency deliberations or discussions regarding the Madoff / BLMIS investigations and examinations. Rather, the Defendants seek testimony regarding "purely factual" material, including dates, times, and content of contacts and communications the Witnesses had with third parties, including BLMIS and FGG. *See McGrady v. Mabus*, 635 F. Supp. 2d 6, 18 (D.D.C. 2009) (material which "reveal[s] only the data used during the process, not the substance of the deliberations" is not protected by the privilege).

Finally, the law enforcement privilege only prohibits the release of governmental information, whether through documents or testimony, that would harm an agency's investigative or enforcement efforts. *See United States v. Amodeo*, 44 F.3d 141, 147 (2d Cir. 1995) (citing *In re Dep't of Investig.*, 856 F.2d 481, 484) (2d Cir. 1988); *see also In re Sealed Case*, 856 F.2d 268, 271-72 (D.C. Cir. 1988) (noting that the law enforcement investigatory privilege protects the "public interest in safeguarding the integrity of *on-going* civil and criminal investigations" and finding that the privilege applied where the Commission "explained that disclosure of the information would jeopardize *on-going* investigations") (emphasis added). The Defendants seek testimony regarding the SEC's past investigative and enforcement efforts, not any on-going effort.

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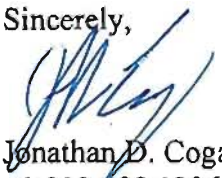
4 Additionally, work product privilege is waived by public disclosure. *See S.E.C. v. Gupta*, 281 F.R.D. 169, 171 (S.D.N.Y. 2012) (noting that disclosure to a third party without "common interests in developing legal theories and analyses of documents" waives the work-product privilege) (quoting *In re Sealed Case*, 676 F.2d 793, 817 (D.C. Cir. 1982)).

We note that details regarding the prior investigative and enforcement efforts related to Madoff and BLMIS have been disclosed in the OIG Report. Moreover, Defendants do not intend to ask the Witnesses any questions about remedial measures the SEC may have undertaken as a result of the Madoff fraud, or in response to the OIG Report. Thus, the proposed depositions do not pose any risk of harming the Commission's investigative efforts, or of disclosing privileged law enforcement techniques or procedures. *See Maher v. Monahan*, No. 98 CIV. 2319 (JGK), 2000 WL 648166, at *3-4 (S.D.N.Y. May 18, 2000) (denying motion to quash based, in part, on assertion of law enforcement privilege where there was neither an on-going proceeding, nor a continuing investigation, noting that the privilege "is properly asserted, not to block an entire deposition, but to preclude specific questions if the resisting party adequately demonstrates that the harm to cognizable law-enforcement interests from requiring an answer outweighs the discovering party's need for the information"); *United States v. Sawinski*, No. 00 CR. 499 (RPP), 2000 WL 1702032, at *3 (S.D.N.Y. Nov. 14, 2000) (noting that the "interests protected by the 'law enforcement privilege'" would "not be compromised" where defendants sought a compilation of procedures followed by a DEA laboratory in the past). Application of the law enforcement privilege, furthermore, is "qualified" such that the "public interest in nondisclosure must be balanced against the need of a particular litigant for access to the privileged information." *In re Sealed Case*, 856 F.2d at 272. Here, the public interest in nondisclosure is minimal, given that the Madoff investigations in question have long-since concluded, whereas Defendants, as explained above, have a significant need for the requested testimony.

* * *

We hope the above information allays any concerns you may have regarding allowing the Witnesses to testify. In light of the unique nature of this case, and the public interests served by a complete disclosure of the facts surrounding the Madoff fraud, we hope you will agree to produce the Witnesses for depositions. We are available to discuss any further concerns you may have or to provide additional information that would be of assistance. We again note, however, that the Court has ordered that *Anwar* fact discovery be completed by June 30, 2013, and we would therefore like to schedule and proceed with depositions of the Witnesses as soon as possible.

Sincerely,



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cc: All *Anwar* Counsel

Appendix A

The following are example topics about which the Defendants plan to inquire of the Witnesses:

- Conversations or interactions the Witness had with Madoff, BLMIS employees, members of FGG, Friehling & Horowitz, BLMIS investors, Fairfield investors, or other third parties;

- Documents provided by Madoff or BLMIS, such as stock records and Depository Trust Company ("DTC") participant statements, that the Witness reviewed;

- Documents provided by or concerning the FGG that the Witness reviewed;

- Documents provided by or concerning Friehling & Horowitz that the Witness reviewed;

- Facts the Witness gathered regarding BLMIS.

Further details regarding the facts the Defendants hope to elicit from each Witness follow.

Meaghan Cheung. Meaghan Cheung was the Branch Chief, Division of Enforcement, Northeast Regional Office. Cheung supervised the investigation of Harry Markopolos's 2005 submission to the SEC (the "2006 Investigation"), and participated with Simona Suh in the interviews of Madoff and FGG employees. Cheung and the 2006 Investigation team discovered that Madoff was acting as an unregistered investment advisor. (*See* OIG Report at 348-50). Cheung communicated with third parties regarding Madoff or BLMIS in connection with the 2006 Investigation. Cheung was also involved in drafting the case opening and case closing reports for the 2006 Investigation. (*See* Exs. 325 and 379 to the OIG Report.)

Mark Donohue. Mark Donohue was Branch Chief, and later Assistant Director, during OCIE's 2003-2004 investigation of BLMIS, which began following receipt of a complaint from a hedge fund manager regarding Madoff's investment management operation (the "OCIE Examination"). Donohue and his investigation team requested documents from Madoff and BLMIS on at least two occasions to gain an understanding of BLMIS's money management business. Donohue personally participated in at least one conference call with Madoff regarding Madoff's responses to the document requests. With respect to "his role in taking over primary responsibility for the examination in 2004," we note that the Defendants seek testimony related to the factual steps that Donohue and the OCIE team took in their investigation, and not the Commission's internal deliberations about promoting Donohue, or the propriety thereof.

John Gentile. John Gentile was the Branch Chief in charge of the 1992 Cause Examination of Madoff, which was conducted in connection with the Commission's investigation into Avellino & Bienes (the "Avellino Examination"). The Avellino Examination investigated Avellino & Bienes's investment scheme for impropriety, and, in connection therewith, conducted an on-site examination of BLMIS in an effort to confirm certain trading positions allegedly held by BLMIS on behalf of Avellino & Bienes. (*See* OIG Report at 47.) As part of the Avellino Examination, Gentile had direct interaction with Madoff, either by telephone or in-person, and was personally

involved in a site visit to BLMIS, whereby Gentile gained first-hand knowledge of BLMIS and Madoff's purported investment strategy.

Peter Lamore. Peter Lamore was a Securities Compliance Officer at the New York Regional Office assigned to NERO's examination of BLMIS in early 2005 (the "NERO Examination"). Lamore participated in the SEC's on-site examination of BLMIS beginning in April 2005, and had conversations and other interactions with Madoff and other BLMIS personnel. The on-site examination lasted more than two months. Lamore also had knowledge of the documents produced by FGG as part of the SEC's 2006 investigation of BLMIS, and participated in interviews of FGG employees, including the interview of Amit Vijayvergiya, on December 21, 2005. (*See* OIG Report at 270, 276.) The Defendants do not intend to seek testimony beyond the subject matters discussed in the OIG Report. (*See, e.g.*, OIG Report at 256, 258, 270-71.) Finally, the Defendants seek to elicit testimony regarding the findings and conclusions set forth in the NERO Examination Report, to the extent those findings and conclusions have been made public. (*See* Ex. 263 to the OIG Report.)

John McCarthy. John McCarthy was Associate Director of OCIE during the OCIE Examination. As part of the OCIE Examination, McCarthy and the team requested and received documents and responses from BLMIS regarding BLMIS's investment management activities. McCarthy had direct contact with Madoff in connection with the OCIE Examination on at least one occasion. (*See* OIG Report at 87-88.) It appears that McCarthy also became aware, based on certain documents provided by BLMIS and/or Madoff, that Madoff's money management business generated more revenues than his market making business. (*See* OIG Report at 103-04.)

William Ostrow. William Ostrow was Senior Compliance Examiner at the New York Regional Office during the NERO Examination. Ostrow participated in the NERO Examination's on-site examination of BLMIS that lasted more than two months, during which Ostrow had direct contact with Madoff "almost every day." (OIG Report at 179.) During the NERO Examination, Ostrow observed Madoff's representations regarding BLMIS's investment advisory business. Ostrow also requested and reviewed numerous documents from BLMIS relating to the investment advisory business.

Simona Suh. Simona Suh was a Staff Attorney in the Division of Enforcement, New York Regional Office, during the 2006 Investigation. As part of the 2006 Investigation, Suh compared information provided by Madoff to SEC staff to documents that Madoff sent to his investors. In connection with that undertaking, Suh requested and reviewed documents from FGG, interviewed Amit Vijayvergiya, and participated in the deposition of Jeffrey Tucker, a FGG founding partner. Suh also requested documents from BLMIS, and participated in Madoff's May 19, 2006 deposition. Suh and the 2006 Investigation team discovered that Madoff was acting as an unregistered investment advisor. (*See* OIG report at 348-350.) Suh communicated with third parties, including the DTC, regarding Madoff or BLMIS in connection with the 2006 Investigation. (*See* OIG Report at 327-328.) Suh was also involved in drafting the case opening and case closing reports for the 2006 Investigation. (*See* Exs. 325 and 379 to the OIG Report.)

Eric Swanson. Eric Swanson was Assistant Director at OCIE during the OCIE Examination. As part of that examination, Swanson and the investigation team requested documents from Madoff and BLMIS on at least two occasions regarding BLMIS's money management activities, and Swanson personally participated in at least one conference call with Madoff regarding Madoff's responses to the document requests. Swanson also received correspondence directly from Madoff in response to the requests.

Demetrios Vasilakis. Demetrios Vasilakis was a member of the Avellino Examination team. Vasilakis participated in the on-site examination of BLMIS, and was present at BLMIS for one or more days during the examination. (*See* OIG Report at 47.) As such, Vasilakis has first-hand knowledge of BLMIS and its purported investment management operations.

EXHIBIT 5

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May 31, 2013

VIA FEDERAL EXPRESS

Melinda Hardy, Esq.
Assistant General Counsel
Office of General Counsel
United States Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549

Re: **Subpoenas issued in *Anwar v. Fairfield Greenwich Limited***
No. 09 Civ. 00118 (VM)(FM) (S.D.N.Y.)

Dear Ms. Hardy:

On behalf of GlobeOp Financial Services LLC ("GlobeOp"), PricewaterhouseCoopers Accountants N.V. ("PwC Netherlands"), PricewaterhouseCoopers LLP ("PwC Canada"), and The Citco Group Limited and related entities ("Citco") (collectively, "Defendants"), we write in response to the requests you made during our May 28, 2009 conference call regarding the above-referenced subpoenas. Specifically, you requested that we reduce the number of depositions sought, that we provide additional information as to the substance of the depositions we seek, and that we further describe the testimony's relevance to the *Anwar* litigation.

I. Number of Depositions

In exchange for the SEC's voluntary cooperation with the subpoenas, at this time we would be willing to limit the depositions to four witnesses: Simona Suh, Peter Lamore, Mark Donohue and John Gentile (collectively, the "Witnesses"). The depositions of these four witnesses are needed to inquire about all of the major SEC investigations and examinations of Bernard L. Madoff Investment Securities and Bernard Madoff ("Madoff"). While we believe that depositions of all of the witnesses listed in our prior correspondence would be justified under the circumstances of this case, we are willing to forego the remaining depositions if you agree to produce these four Witnesses.

II. Substance and Relevance of the Witnesses' Testimony

The Defendants seek to examine the Witnesses regarding only outward-facing aspects of their examinations and investigations that have already been made public. The depositions would primarily focus on (1) the Witnesses' employment backgrounds and roles in the investigations or examinations; (2) topics discussed during the depositions of the Witnesses taken by the SEC Office of Inspector General ("OIG"); (3) facts in the publicly available version of the OIG's report, "Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme," Report No. OIG-509; and (4) topics discussed during the Witnesses' depositions and interviews of Madoff and individual officers of the Fairfield Greenwich Group ("FGG").

To further clarify the scope of the testimony sought, Appendix A to this letter provides a representative sample of facts that we plan to elicit from Peter Lamore. Our examinations of the other three Witnesses would cover similar topics with respect to the SEC investigations in which those Witnesses participated. We would be willing to provide a similar list of topics for every Witness prior to his or her deposition.

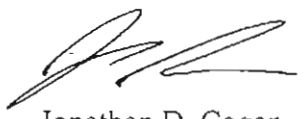
As we explained in our letter dated April 25, 2013, the Witnesses' testimony is highly relevant to the Plaintiffs' claims and Defendants' defenses and arguments in response to specific Plaintiff allegations. First, the steps that the SEC took to investigate Madoff, and the information that it obtained during the course of its investigations and examinations, are relevant to the *Anwar* Plaintiffs' allegation that additional due diligence by the Defendants would have uncovered the fraud. Lamore's inquiry into Madoff's options trading and Madoff's misleading responses to his inquiries, as described in Lamore's testimony to the OIG, is just one example of the type of due diligence that, according to the *Anwar* Plaintiffs, would have led the Defendants to discover the fraud. Facts shedding light on the type of due diligence inquiry that would have actually uncovered the fraud could also be relevant to any dispute concerning the Defendants' comparative fault.

Second, certain Witnesses' interactions with individuals at FGG are also probative of the alleged collusion between FGG and Madoff, and the extent to which that collusion rendered discovery of the fraud more difficult. Testimony by Lamore and Suh regarding the extent to which FGG cooperated with the SEC's document requests, as well as their interactions with FGG officers such as Jeffrey Tucker and Amit Vijayvergiya, speak directly to this issue.

Third, the facts uncovered through the SEC's investigations and examinations shed additional light on the mechanics of Madoff's fraud, including how he created false documentation and offered deliberately deceptive responses to inquiries by interested parties.

We hope that the information included in this letter satisfies your concerns. With fact discovery to be completed by June 30, 2013, it is imperative that we schedule and proceed with depositions of the Witnesses as soon as possible. Please let us know by the close of business on June 4 whether the SEC will agree to produce the Witnesses for depositions.

Sincerely,



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cc: All *Anwar* Counsel

Appendix A

The following are a representative sample of topics about which the Defendants plan to inquire of Peter Lamore:

- General educational and employment background
- Employment with the SEC
- Basic facts regarding the SEC's 2004-2005 cause examination of BLMIS, including:
    - The respective roles of Lamore, John Nee and William Ostrow in the examination
    - Lamore reviewed Renaissance emails alleging suspicious activities and did background research on Madoff before the examination started [Lamore Dep. 31:5-7; 31:23-25; 48:23-49:3; 59:2-15; 61:11-18; OIG Report pp. 21, 145, 147]
    - The cause examination began on or about April 1, 2005 [Lamore Dep. 47:25-48:5]
    - The examiners made an initial document request to BLMIS on April 1, 2005, which Lamore was involved in crafting, reviewing or editing [Lamore Dep. 55:5-11]
    - the examiners received a trade blotter for Madoff's investment advisory business [Lamore Dep. 87:2-5]
    - Lamore and Ostrow were on site for two and a half to three months [Lamore Dep. 29:3-4]
    - During the examination, Lamore interacted daily with Bernard Madoff, who was the SEC's primary contact for BLMIS [Lamore Dep. 28:18-21; 29:15-16]
    - Madoff had an incredible background of knowledge of the industry [Lamore Dep. 51:12-13]
    - The examiners considered the fact that Madoff's auditor was supposedly also his brother in law [Lamore Dep. 35:21-36:8]
    - The examiners did not look into Friehling & Horowitz during the cause examination [Lamore Dep. 146:3-5]
    - The consistency of Madoff's returns was one of the central issues in the cause examination [Lamore Dep. 42:23-44:1]
    - Madoff's ability to time the market was a focus of the cause examination [Lamore Dep. 65:16-22]
    - Madoff told Lamore that he no longer traded options as part of his strategy [Lamore Dep. 42:4-5]
    - By June 2005 Madoff had provided the requested documents [Lamore Dep. 141:24-25]

- The examiners considered visiting some of the hedge funds Madoff executed the split-strike conversion strategy for, including Fairfield [Lamore Dep. 142:1-6]

- The final cause examination report was sent to John Nee on September 1, 2005 [Lamore Dep. 155:19-22]

- Basic facts regarding the SEC's enforcement investigation of BLMIS in 2005-2006, including:

  - In November 2005, Lamore became aware of and read a report written by Harry Markopolous regarding Madoff [Lamore Dep. 161:24-162:3; 174:-5]

  - In November 2005, the enforcement division was beginning an investigation of Madoff [Lamore Dep. 165:21-166:3]

  - The enforcement team sent a document request to Fairfield; Fairfield responded, and Lamore helped review the documents [Lamore Dep. 187:16-188:19]

  - Lamore participated in a December 21, 2005 conference call with Amit Vijayvergiya of Fairfield [Lamore Dep. 200:1-8; 208:3-6; OIG Report p. 276]

  - The investigators received a list of options counterparties [Lamore Dep. 42:7-9; 203:11-14]

  - Lamore found that the number of S&P 100 index options purportedly traded by Madoff were an order of magnitude greater than the total exchange traded volume of those options [Lamore Dep. 213:3-9]

  - Lamore participated in a conference call with individuals from the SEC's office of economic analysis [Lamore Dep. 234:19-24]

  - Lamore spoke with SEC's Ellen Hersch regarding the DTC [Lamore Dep. 238:4-8; 242:7-10]

  - Lamore and others spoke with a contact at the Chicago Board of Options Exchange in connection with the BLMIS investigation [Lamore Dep. 240:9-10]

  - Lamore participated in taking Frank DiPascali's testimony on January 26, 2006 [FNN v. SEC - 10281-83]

  - Lamore participated in taking Jeffrey Tucker's testimony on January 30, 2006 [FNN v. SEC – 16832]

  - Lamore participated in taking Bernard Madoff's testimony on May 19, 2006 [FNN v. SEC - 10571]

EXHIBIT 6

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

By Electronic Mail

June 7, 2013

Jonathan D. Cogan, Esq.
Justin Sommers. Esq.
Kobre & Kim
800 Third Avenue
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Re: Subpoenas issued in *Anwar v. Fairfield Greenwich Limited*, No. 09 Civ. 00118 (VM) (FM) (S.D.N.Y)

Dear Messrs. Cogan and Sommers:

I am in receipt of your letters dated April 25, 2013 and May 31, 2013, as well as Amanda McGovern's letter dated February 27, 2013. Those letters initially requested depositions in the above-captioned litigation of nine current or former employees of the Securities and Exchange Commission – Meaghan Cheung, Mark Donohue, John Gentile, Peter Lamore, John McCarthy, William Ostrow, Simona Suh, Eric Swanson, and Demetrios Vasilakis. Each of these individuals was a member of a team that conducted an examination or investigation of Bernard L. Madoff Investment Securities ("BMIS") or Bernard Madoff. You state that you believe these individuals' "testimony is highly relevant to the Plaintiffs' claims and Defendants' defenses and arguments in response to specific Plaintiff allegations."[1] May 31 Letter at 2. I have considered your request pursuant to the authority delegated to me pursuant to 17 C.F.R. 200.30-14(f), 17 C.F.R. 200.735-3(b)(2)(iii), and 17 C.F.R. 240.0-4. Under those provisions, current and former SEC employees served with a subpoena may not testify about matters within the scope of their SEC employment unless the Office of the General Counsel determines that such information has been validly subpoenaed and its disclosure is consistent with the public interest. For the reasons stated below, I have determined that authorizing these individuals to testify here would be contrary to the public interest and am denying your request.

[1] In this letter, we will use the definitions from your May 31 letter for terms such as Defendants, Plaintiffs, FGG, and Witnesses.

Authorizing the testimony is contrary to the public interest – and not required by Rule 45 of the Federal Rules of Civil Procedure – because any relevance the information you seek may have to your case is outweighed by the burden on the SEC of providing the testimony. *See* Fed. R. Civ. P. 45(c)(3)(A)(iv). The D.C. Circuit has explained the relevant considerations in evaluating whether a subpoena imposes an undue burden, particularly with respect to subpoenas to government agencies or employees:

> The Rule 45 "undue burden" standard requires district courts supervising discovery to be generally sensitive to the costs imposed on third parties. . . . In addition, Federal Rule of Civil Procedure 26(b)(1)-(2) requires district courts in "[a]ll discovery" to consider a number of factors potentially relevant to the question of undue burden, including: whether the discovery is "unreasonably cumulative or duplicative"; whether the discovery sought is "obtainable from some other source that is more convenient, less burdensome, or less expensive"; and whether "the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues."
>
> With these tools, district courts in cases involving third-party subpoenas to government agencies or employees can adequately protect both the litigant's right to evidence and the "government's interest in not being used as a speakers' bureau for private litigants." *Exxon Shipping,* 34 F.3d at 780 (internal quotation marks omitted). As the court in *Exxon Shipping* recognized, in other words, discovery under Rules 26 and 45 must properly accommodate "the government's serious and legitimate concern that its employee resources not be commandeered into service by private litigants to the detriment of the smooth functioning of government operations." *Id.* at 779; *see also Moore,* 927 F.2d at 1197-98 (expected "onslaught of subpoenas" in similar litigation raised substantial concern about "cumulative impact" of individual subpoena) (internal quotation marks omitted); *Davis Enters.,* 877 F.2d at 1187 (agency had "legitimate concern with the potential cumulative effect" and "proliferation of testimony by its employees" that compliance with individual subpoena would entail).

Watts v. SEC, 482 F.3d 501, 509 (D.C. Cir. 2007) (some citations omitted).[2]

In applying these factors here, I have determined that while the underlying case raises important issues, those issues concern what the Defendants actually did or did not do in satisfying any obligations they may have had to obtain information about BMIS and Madoff, and the investments that were purportedly made. You do not contend that the testimony you seek will shed any light on what information the Defendants actually sought, on Madoff's or FGG's response to those efforts, or on whether the Defendants had a duty to seek certain information. Instead, you contend that SEC staff testimony may show what may have happened if the Defendants had made certain inquiries and may show obstacles that could have been present. Such speculative testimony is, at best, of extremely limited relevance and appears to be potentially far more confusing than probative.[3]

The SEC was in a very different position than any of the Defendants because its focus was different (looking at Madoff's compliance with the securities laws as opposed to verifying assets were safe), its relationship with Madoff was different (a government regulator conducting occasional examinations or investigations as opposed to providing services to a close business associate of Madoff's), and the consequences it could impose were different (bringing an

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May 31 letter at 2. You seem to be arguing that Lamore's testimony that Madoff told him during an examination that he had stopped trading options provides evidence about what he would have told the Defendants if they had asked similar questions about options trading. However, that argument is unavailing for the Defendants because Madoff was providing FGG documents showing that he was trading options. Lamore's testimony (which we have provided to you) indicates that he did not know what Madoff had been telling FGG (or other investors) about continuing to trade options. Thus, the example you provide does not indicate that Madoff's responses to the SEC show what he would have told the Defendants, and I am not aware of any examples of how SEC testimony could be relevant to addressing whether due diligence by the Defendants would have uncovered the fraud.

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his statement to Lamore regarding options trading, in most contexts Madoff would not have been able to take the same approach with the Defendants that he took with the SEC because of the different relationships.

In evaluating your relevance arguments, I find it significant that this is not a case where you are unaware of what information you are likely to obtain in a deposition. The SEC has made public the detailed report prepared by its Office of Inspector General ("OIG") regarding the examinations and investigation that failed to uncover that Madoff was conducting a Ponzi scheme. In addition, we have provided to you testimony or interviews provided to the OIG – including testimony or interviews provided by the proposed Witnesses – and many documents from the examinations and investigation. Thus, your failure to adequately establish the relevance of the proposed depositions is not because you do not know what the testimony would reveal.

The burden that taking nine depositions would impose on the SEC easily outweighs the relevance of the testimony you seek. With respect to the four Witnesses that are current SEC employees – Mark Donohue, Peter Lamore, William Ostrow, and Simona Suh – the cumulative impact on the SEC is significant. All four will need to take time away from significant SEC matters to prepare for and attend the depositions. For example, Mr. Donohue is the Chief of SRO Monitoring and monitors our markets daily, and it is important for him to be on duty as much as possible and to be accessible to his staff even when he is not on duty. Also, Ms. Suh and Mr. Lamore both work in the SEC's Division of Enforcement and have significant ongoing responsibilities. Ms. Suh is the lead attorney in three active matters: an ongoing investigation, a matter that is being actively litigated, and a matter in which she hopes to obtain authorization to file a complaint this summer. She also is already obligated to be away from work for several days in June because of family obligations (not vacations). Mr. Lamore is working on three investigations and in each is responsible for analyzing trading data in addition to other data gathered in the cases. His availability is crucial to helping each investigation move forward, particularly in one investigation in which he is helping to prepare for testimony that is scheduled for June. Finally, Mr. Ostrow is the lead examiner on an ongoing matter and may also need to assist Enforcement staff on a matter that arose from a prior examination and that may result in actions being brought this summer.

In addition, preparing for nine depositions places a significant burden on the additional SEC staff members who will need to assist in preparation for the depositions, particularly in determining what is privileged. Those staff members include not only attorneys in the SEC's

Office of the General Counsel, but also Division of Enforcement staff responsible for ongoing investigations and litigation relating to Madoff. While you have committed to seeking only testimony about "outward-facing aspects of [the Witnesses] examinations and investigations," the Plaintiffs have provided no such assurances. Determining the scope of the privilege is far more complicated in this case than in most. In connection with the OIG report, the SEC has released a great deal of privileged information, but there are still areas that need to remain privileged because of ongoing investigations and litigation. Because we cannot simply determine that all internal communications or deliberations are privileged, staff will need to review the voluminous documents that have been made public before determining what can and should remain privileged and explaining those lines to each Witness.

Under these circumstances, your request to depose nine current and former Commission employees will impose a significant disruption on the ability of those proposed witnesses who remain at the Commission to perform the important tasks they are currently working on, and impose a similar burden on other Commission employees whose testimony has not been sought, but who will need to be involved either in preparation efforts prior to the deposition or who will need to participate in the depositions. You have not demonstrated that the relevance of the testimony you seek and its importance to the trial of this matter is sufficient to outweigh the very significant burden that will be imposed on the Commission's operations. *See Watts v. SEC*, 482 F.3d at 509. Accordingly, I am denying your request to depose these current and former Commission employees.

For the reasons stated above, I am also denying your request to take the testimony of these SEC staff members at trial, as authorizing such testimony would be contrary to the public interest. You may appeal this decision to the Commission pursuant to the procedures set forth in 17 C.F.R. 201.430(b). *See In re SEC ex re. Glotzer*, 374 F.3d 184, 192 (2d Cir. 2004).

For the Commission pursuant
to delegated authority,

RMH

Richard M. Humes
Associate General Counsel

EXHIBIT 7

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June 14, 2013

VIA FACSIMILE (202) 772-9324
AND FEDERAL EXPRESS

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9612

Re: Subpoenas issued in *Anwar v. Fairfield Greenwich Limited*
No. 09 Civ. 00118 (VM)(FM) (S.D.N.Y.)

Dear Secretary Murphy:

We write on behalf of GlobeOp Financial Services LLC, PricewaterhouseCoopers Accountants N.V., PricewaterhouseCoopers LLP, and The Citco Group Limited and related entities (collectively, "Defendants") in the above-referenced action. On February 27, 2013, pursuant to served subpoenas, Defendants first requested depositions of nine current and former employees of the Securities and Exchange Commission ("SEC") who conducted examinations or investigations of Bernard L. Madoff Investment Securities or Bernard Madoff. After a series of calls and correspondence between the SEC staff and Defendants, the SEC's Associate General Counsel, in a letter dated June 7, 2013, denied Defendants' request to depose any of the current and former employees. The SEC's June 7, 2013 letter is enclosed.

Defendants submit this letter pursuant to Rule 430(b)(1) of the SEC's Rules of Practice as written notice of Defendants' intention to petition for review of the SEC's June 7, 2013 decision. Defendants intend to file separately a petition for review in accordance with SEC Rule 430(b)(2).

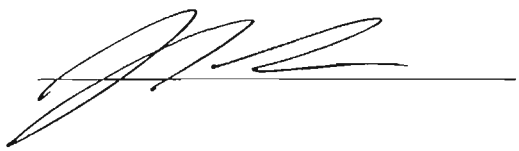
Please let us know if you have any questions about this.

Sincerely,

Jonathan D. Cogan
Justin Sommers
+1 212 488 1206

CERTIFICATE OF SERVICE

I, Justin Sommers, counsel for GlobeOp Financial Services LLC, hereby certify that on June 14, 2013, I filed the foregoing notice of intention to petition for review with the Secretary of the United States Securities and Exchange Commission by facsimile ((202) 772-9324) and Federal Express. A copy was also served on Assistant General Counsel Richard M. Humes via facsimile, Federal Express, and electronic mail.



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

By Electronic Mail

June 7, 2013

Jonathan D. Cogan, Esq.
Justin Sommers. Esq.
Kobre & Kim
800 Third Avenue
New York, New York 10022

Re: Subpoenas issued in *Anwar v. Fairfield Greenwich Limited*, No. 09 Civ. 00118 (VM) (FM) (S.D.N.Y)

Dear Messrs. Cogan and Sommers:

I am in receipt of your letters dated April 25, 2013 and May 31, 2013, as well as Amanda McGovern's letter dated February 27, 2013. Those letters initially requested depositions in the above-captioned litigation of nine current or former employees of the Securities and Exchange Commission – Meaghan Cheung, Mark Donohue, John Gentile, Peter Lamore, John McCarthy, William Ostrow, Simona Suh, Eric Swanson, and Demetrios Vasilakis. Each of these individuals was a member of a team that conducted an examination or investigation of Bernard L. Madoff Investment Securities ("BMIS") or Bernard Madoff. You state that you believe these individuals' "testimony is highly relevant to the Plaintiffs' claims and Defendants' defenses and arguments in response to specific Plaintiff allegations."[1] May 31 Letter at 2. I have considered your request pursuant to the authority delegated to me pursuant to 17 C.F.R. 200.30-14(f), 17 C.F.R. 200.735-3(b)(2)(iii), and 17 C.F.R. 240.0-4. Under those provisions, current and former SEC employees served with a subpoena may not testify about matters within the scope of their SEC employment unless the Office of the General Counsel determines that such information has been validly subpoenaed and its disclosure is consistent with the public interest. For the reasons stated below, I have determined that authorizing these individuals to testify here would be contrary to the public interest and am denying your request.

[1] In this letter, we will use the definitions from your May 31 letter for terms such as Defendants, Plaintiffs, FGG, and Witnesses.

Authorizing the testimony is contrary to the public interest – and not required by Rule 45 of the Federal Rules of Civil Procedure – because any relevance the information you seek may have to your case is outweighed by the burden on the SEC of providing the testimony. *See* Fed. R. Civ. P. 45(c)(3)(A)(iv). The D.C. Circuit has explained the relevant considerations in evaluating whether a subpoena imposes an undue burden, particularly with respect to subpoenas to government agencies or employees:

> The Rule 45 "undue burden" standard requires district courts supervising discovery to be generally sensitive to the costs imposed on third parties. . . . In addition, Federal Rule of Civil Procedure 26(b)(1)-(2) requires district courts in "[a]ll discovery" to consider a number of factors potentially relevant to the question of undue burden, including: whether the discovery is "unreasonably cumulative or duplicative"; whether the discovery sought is "obtainable from some other source that is more convenient, less burdensome, or less expensive"; and whether "the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues."
>
> With these tools, district courts in cases involving third-party subpoenas to government agencies or employees can adequately protect both the litigant's right to evidence and the "government's interest in not being used as a speakers' bureau for private litigants." *Exxon Shipping,* 34 F.3d at 780 (internal quotation marks omitted). As the court in *Exxon Shipping* recognized, in other words, discovery under Rules 26 and 45 must properly accommodate "the government's serious and legitimate concern that its employee resources not be commandeered into service by private litigants to the detriment of the smooth functioning of government operations." *Id.* at 779; *see also Moore,* 927 F.2d at 1197-98 (expected "onslaught of subpoenas" in similar litigation raised substantial concern about "cumulative impact" of individual subpoena) (internal quotation marks omitted); *Davis Enters.,* 877 F.2d at 1187 (agency had "legitimate concern with the potential cumulative effect" and "proliferation of testimony by its employees" that compliance with individual subpoena would entail).

Watts v. SEC, 482 F.3d 501, 509 (D.C. Cir. 2007) (some citations omitted).[2]

In applying these factors here, I have determined that while the underlying case raises important issues, those issues concern what the Defendants actually did or did not do in satisfying any obligations they may have had to obtain information about BMIS and Madoff, and the investments that were purportedly made. You do not contend that the testimony you seek will shed any light on what information the Defendants actually sought, on Madoff's or FGG's response to those efforts, or on whether the Defendants had a duty to seek certain information. Instead, you contend that SEC staff testimony may show what may have happened if the Defendants had made certain inquiries and may show obstacles that could have been present. Such speculative testimony is, at best, of extremely limited relevance and appears to be potentially far more confusing than probative.[3]

The SEC was in a very different position than any of the Defendants because its focus was different (looking at Madoff's compliance with the securities laws as opposed to verifying assets were safe), its relationship with Madoff was different (a government regulator conducting occasional examinations or investigations as opposed to providing services to a close business associate of Madoff's), and the consequences it could impose were different (bringing an

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For the reasons stated above, I am also denying your request to take the testimony of these SEC staff members at trial, as authorizing such testimony would be contrary to the public interest. You may appeal this decision to the Commission pursuant to the procedures set forth in 17 C.F.R. 201.430(b). *See In re SEC ex re. Glotzer*, 374 F.3d 184, 192 (2d Cir. 2004).

For the Commission pursuant
to delegated authority,

Richard M. Humes
Associate General Counsel