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March 24, 2014

BY FACSIMILE

Judge Victor Marrero
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: ***Anwar, et al. v. Fairfield Greenwich Limited, et al.***
Master File No. 09-CV-00118 (VM) (FM)

Dear Judge Marrero:

We write on behalf of the *Anwar* Plaintiffs in response to the Citco Defendants' March 19, 2014 letter (the "Letter") to Your Honor requesting "clarification" of the Court's August 6, 2012 Decision and Order, 884 F. Supp. 2d 92 (S.D.N.Y 2012) (the "Order"). The Order modified the Court's decision in *Anwar II*, in light of the Second Circuit's then-recent decision in *Stephenson v. PricewaterhouseCoopers, LLP*, 482 Fed. App'x 618 (2d Cir. June 13, 2012), to limit negligence-based claims against the PwC Defendants to subsequent investments made by existing investors in the Fairfield Funds.

In this regard, the Order relied on Plaintiffs' acknowledgement that the PwC Defendants did not know the identity of prospective investors and thus Plaintiffs could not satisfy the *Credit Alliance* test as to PwC with respect to Plaintiffs' initial investments. Order at 97. Plaintiffs' concession was explicitly limited, however, to the PwC Defendants, and did not apply to the Citco or Fairfield Defendants, all of whom had joined in PwC's letter brief. We believe that the Order – which contains no discussion of facts concerning the Citco or Fairfield Defendants on this issue – clearly applies only to claims against "defendants PwC Canada and PwC Netherlands," whose motion was "granted in part." *Id.* at 100.

Thus, Citco is wrong in arguing that the reasoning of the Order supports dismissal of negligence-based claims against Citco arising from Plaintiffs' initial investments on grounds that Citco was not in near-privity "*before* those investors made their initial investment decisions to invest in the funds." *See* Letter at 4 (emphasis in original). If Citco believes that the factual record now available through discovery supports its position – and Plaintiffs believe that the record shows exactly the opposite – it can make that argument in a summary judgment motion due to be filed within a couple of months.

A. The Order Granted, in Part, the Motion of the PwC Defendants, Not All Defendants

The Order granted the motion to dismiss, in part, only as to the PwC Defendants. Near the beginning of the Order, the Court stated: "For the reasons discussed below, the PwC Defendants' motion for reconsideration is GRANTED in part and DENIED in part." Order at 95. This was repeated at the end of the Order: "Ordered that the motion (Docket Nos. 886 and 901) of defendants PwC Canada and PwC Netherlands for reconsideration is hereby GRANTED in part and DENIED in part in accordance with this Decision and Order." *Id.* at 100. The Order contains no language that grants any motion made by the Citco Defendants or "Defendants" generally.

This distinction is meaningful. While "Defendants" was defined in the Order as including Citco and the Fairfield Defendants (*Id.* at 94), in neither of the two operative decretal sentences quoted above did the Court use the term "Defendants" – rather, it specifically referred to the PwC Defendants. Moreover, it would have made no sense to grant relief to all "Defendants," since that term included the Fairfield Defendants who indisputably solicited and were directly involved in the initial investment process.

Nor would it have made sense to grant such relief to Citco without discussion. The Order referred to Plaintiffs' June 4, 2012 letter [Dkt. No. 908], which conceded that damages are not available "from PwC for the class negligent misrepresentation cause of action with respect to new investors making initial investments." *See* Order at 97. Plaintiffs' letter expressly distinguished claims relating to Citco, arguing that, although the Fairfield Defendants and Citco had joined in the PwC letter, the *Stephenson* case "says nothing inconsistent with the Court's holding in *Anwar II* that Plaintiffs have properly alleged initial investment claims against the Fund administrators to whom 'potential investors . . . were known parties.'" Dkt. No. 908 at 1-2 n.2 (citing *Anwar II*, 728 F. Supp. 2d 372, 434 (S.D.N.Y. 2010)). Citco never disputed this, and nowhere did the Order discuss Plaintiffs' claims against Citco. Indeed, the discovery record now confirms Plaintiffs' allegations that Citco knew and communicated with investors in connection with initial investments in the Funds, and investors necessarily relied, among other things, on Citco's utterly false calculation of Net Asset Value.

B. The Reasoning of the Order Does Not Apply to Citco

Citco's letter ignores that the Court previously rejected precisely the same arguments now raised by Citco when it denied Citco's initial motion to dismiss "prospective investor" claims as part of the *Anwar II* decision addressing Plaintiffs' Second Consolidated Amended Complaint ("SCAC"). In *Anwar II*, the Court sustained Plaintiffs' claims against the Citco Administrators arising from both initial and subsequent investments:

> The Court finds that Plaintiffs sufficiently allege that these prospective investors, to which the Administrators sent certain financial documents, were "known" for

> the purposes of the Credit Alliance test. Plaintiffs allege that the Administrators "induced Plaintiffs to make their initial investments in the Funds" (SCAC ¶ 534) and that "Plaintiffs sent their subscription documents directly to Citco . . . ." (*Id.* ¶ 328.) Plaintiffs also allege that the Administrators "knew that Plaintiffs would rely upon the false NAV and account balance statements for the particular purpose of deciding whether to invest in the Funds." (*Id.* ¶ 535.) At this point, the Court finds that Plaintiffs adequately allege that there was a discrete group of potential investors, not simply a faceless mob, who were known parties to the Administrators, and that the Administrators intended those investors to rely upon the NAV and account balance statements to invest in the Funds."

Anwar II, 728 F. Supp. 2d at 434 (citation omitted); *see Id.* at 424 ("The Administrators disagree with Plaintiffs' allegations, claiming that they did not communicate with prospective investors and that therefore Plaintiffs could not possibly have relied upon the Administrators' statements *in their decisions to invest in the Funds.* But given that the Court must accept Plaintiffs' factual allegations as true and resolve doubts in their favor, the Administrators' factual protests are irrelevant at this time.") (citing SCAC ¶ 333; emphasis added).

Thus, the SCAC pleaded that all aspects of the *Credit Alliance* test were satisfied as to Citco with respect to initial as well as subsequent investments. Citco knew the specific identity of investors prior to their initial investments in the Funds because Citco received and processed their subscription documents and payments for Fund subscriptions. If Citco seeks to argue otherwise, it may do so in upcoming summary judgment motion practice.

In sum, the August 6, 2012 Order was clear, and there was no basis then, nor is there now, for Citco to avail itself of a ruling applicable only to the PwC Defendants.

Respectfully yours,

David A. Barrett

cc: All counsel in *Anwar* (by email)

The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by the Anwar Plaintiffs.

SO ORDERED.

3-27-14
DATE

VICTOR MARRERO, U.S.D.J.

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