

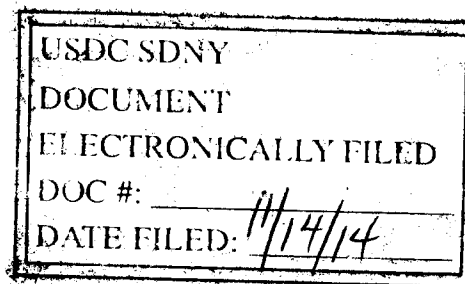
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November 13, 2014

BY FAX

The Honorable 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.*, 09-CV-00118

Dear Judge Marrero:

We write on behalf of the *Anwar* Plaintiffs in response to the October 31, 2014 letter from Sharon L. Nelles (Dkt. No. 1333) on behalf of the Standard Chartered Bank Defendants (“SCB”). SCB urges the Court to revisit its ruling on the Securities Litigation Uniform Standards Act of 1998 (“SLUSA”) and to find that SLUSA bars all claims pending against SCB. We believe that there is no basis at the present time for the Court to reconsider its ruling in *Anwar II*, 728 F.Supp.2d 372, 397-399 (S.D.N.Y. 2010), that SLUSA does not preclude the *Anwar* Plaintiffs’ claims arising from their multi-billion dollar losses in the Fairfield Funds. The SCB letter devotes 17 pages to the SLUSA issue, making arguments that potentially could have significant impact on the claims of the *Anwar* Plaintiffs. Accordingly, if Court were to address this subject on the merits at this time, we respectfully request leave to submit a substantive letter brief responding to SCB’s arguments.

SCB first asked the Court to revisit its SLUSA ruling a year ago, in a letter from Ms. Nelles on November 12, 2013 (Dkt. No. 1226). The Court did not do so at that time, and there is no more reason to do so now. Among other reasons:

- The major pronouncement concerning SLUSA in the past year is the Supreme Court’s rejection of its application to investments in uncovered securities which were the source of money lost in a Ponzi scheme. The Court recognized that SLUSA has “no concern” with such investments in uncovered securities. *See Chadbourne & Parke LLP v. Troice*, 134 S. Ct. 1058, 1066 (2014).
- The Second Circuit still has pending before it the appeal (fully-briefed and argued by me on April 9, 2013) in *In re Kingate*, No. 11-1397. In contrast to *In re Herald, Primeo & Thema Sec. Litig.*, 730 F.3d 112 (2d Cir. 2013), *reh’g denied* 753 F.3d 110 (2d Cir. 2014), *Kingate* poses the issue of SLUSA’s application to claims against investment advisors and third-party service providers (e.g., administrators, custodians and accountants) who (unlike the defendant banks in *Herald*) had a direct relationship with plaintiffs’ investments in uncovered securities.

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- It makes sense for SLUSA issues to be considered in the much broader context of the *Anwar* class claims, which involve all plaintiffs, rather than the limited sub-set of the *Anwar* Plaintiffs who have SCB claims.


SCB previously has stated that its SLUSA motion “would neither ask nor require this Court to reconsider its decision not to apply SLUSA to dismiss the claims asserted in the *Anwar* class action that is also a part of this MDL.” Letter of November 26, 2013 (Dkt. No. 1236). That is reiterated in SCB’s current letter at page 5. Although we agree that distinctions can be drawn between the claims asserted against the SCB Defendants and those of the *Anwar* Plaintiffs, it remains that SCB is asking this Court to fundamentally alter its prior SLUSA analysis in *Anwar II* (see, e.g., SCB letter at 14 n.12 (“the Court did not have the benefit of the *Herald* decisions, which the Second Circuit issued after [this Court’s *Anwar II*] ruling”)), an analysis that has been relied upon by a number of other courts, and that directly affects the *Anwar* Plaintiffs. If the Court were to decide to engage in such reconsideration now, we respectfully request the opportunity to address the merits by submitting a letter brief, not exceeding 15 pages, and to have the opportunity to participate in any further briefing or argument the Court may allow on these issues.

Respectfully yours,



David A. Barrett

cc: Sharon L. Nelles, Esq.
 Standard Chartered Plaintiffs’ Steering Committee
 Andrew G. Gordon, Esq.
 Timothy A. Duffy, Esq.
 Sarah Loomis Cave, Esq.

The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by	
<u>Anwar Plaintiffs</u>	
SO ORDERED.	
<u>11-14-14</u>	
DATE	VICTOR MARRERO, U.S.D.J.