# THE BRODSKY LAW FIRM, PL

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***By email with the permission of Chambers***

Honorable Victor Marrero
United States District Judge
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007-1312

**Re:** ***Anwar, et al. v. Fairfield Greenwich Limited, et al.,***
***09-cv-118 (VM) (THK)***
***Standard Chartered Cases***

Dear Judge Marrero:

The Standard Chartered Plaintiffs ("Plaintiffs") respond to the October 31, 2014 letter ("SC Letter") from the Standard Chartered Defendants ("SC") concerning summary judgment.

At the September 29, 2014 hearing, SC's lead counsel admitted that SC did not dispute the facts in the Plaintiffs' September 9, 2014 letter ("Plaintiffs' Letter"), just their "import," Transcr., 9/29/14 hrg., 17, and confirmed that "[no facts are] disputed that are material." *Id.*, 49. Counsel's admissions, of course, are binding on her clients. *Haywood v. Bureau of Immigration*, 372 Fed.Appx. 122, 124 (2d Cir. 2010) (admissions by counsel during pendency of litigation ordinarily binding on client); *Kregler v. City of New York*, 770 F. Supp. 2d 602, 607 (S.D.N.Y. 2011) (same). These admissions were confirmed when the SC Letter failed to dispute a single fact asserted in the Plaintiffs' Letter or at the hearing.

Accordingly, SC's complaint that it "has not been afforded the same opportunity [as the Plaintiffs] to present the law and facts which entitle it to summary judgment,"

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SC Letter, 20 n. 19, is groundless.[1] At the September 29 hearing, the Court discussed treating SC's letters as a motion for summary judgment, Transcr., 9/29/14 hrg., 48, and, with full awareness of what was at stake, SC conceded that the only issues were legal in nature, which it confirmed in its Letter by contesting none of the facts. It has been given every opportunity to show why, on the uncontested facts, no reasonable jury could rule in favor of the Plaintiffs on any of their claims.[2] The Court, therefore, need not exalt form over substance by extending SC the opportunity to make a formal, yet futile, motion.

## I.

## SC WAIVED THE RIGHT TO MOVE FOR SUMMARY JUDGMENT ON LIMITATIONS GROUNDS BECAUSE IT NEVER ALLEGED LIMITATIONS AS AN AFFIRMATIVE DEFENSE

SC claims it will be able to show that some if not all of the Plaintiffs' claims are time-barred, but it has waived this defense by failing to assert it as an affirmative defense in any of the SC Cases. "A claim that a statute of limitations bars a suit is an affirmative defense, and, as such, it is waived if not raised in the answer to the complaint." *Litton Indus., Inc. v. Lehman Bros. Kuhn Loeb Inc.*, 967 F.2d 742, 751-52 (2d Cir.1992) (citing Fed.R.Civ.P. 8(c)). SC, therefore, may not move for summary judgment

[1]SC complains that the Plaintiffs submitted a 10-page letter in response to SC's initial 3-page letter. The fact is, however, that, before any letters were sent, SC expressly agreed to the Plaintiffs' request that the Court allow them 10 pages to respond to its initial letter, and SC did not ask to submit a longer letter. Then, at the September 29, 2014 hearing, after being specifically being told by the Court about the required scope of its reply letter, SC *volunteered* to the Court a limit of 25 double spaced pages on its letter ("I would think we can do that in 25 pages [double-spaced]." Transcr., 9/29/14 hrg., 49.

[2]The Court may consider SC's argument on the Securities Litigation Uniform Standards Act ("SLUSA"), Pub. L. No. 105-353, 112 Stat. 3227 (1998) (codified as amended in scattered sections of 15 U.S.C.), as a motion for judgment on the pleadings under Fed.R.Civ.P. 12(c). SC in essence agreed to that procedure at the September 29 hearing ("we will be responding to the SLUSA which I agree can be deemed whatever a motion. It doesn't require summary judgment.)" Transcr., 9/29/14 hrg., 49.

on an affirmative defense it has not asserted. *United States v. Landau,* 155 F.3d 93 (2d Cir. 1998).[3]

We further note that SC's limitations argument is contained solely in Exhibit B to its Letter. The Court should not consider that argument because it would enable SC, without seeking leave, to exceed the very 25-page limitation that SC itself suggested. (The SC Letter itself is 25 pages long.) The same goes for Exhibit D, which contains a purported analysis of the relevance of statements made in the Plaintiffs' Letter. Because of SC's violation of the page limitation, we do not believe we are obligated to respond to the argument contained in Exhibit B. *However, if the Court concludes that it will consider Exhibit B despite SC's exceeding the 25-page limit, we request an additional seven days from being so notified to respond to SC's argument (and up to five pages in which to do so).*

## II.

## SC'S CANNOT DEMONSTRATE THAT IT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW ON THE PLAINTIFFS' BREACH OF FIDUCIARY DUTY AND NEGLIGENCE CLAIMS

### A. Introduction

SC claims that it is entitled to summary judgment on the Plaintiffs' breach of fiduciary duty and negligence claims (hereafter referred to as "Due Diligence Claims"). At the September 29 hearing, the Court stated its preliminary view that showing an entitlement to summary judgment on those claims would be an "uphill battle." Transcr., 9/29/14 hrg., 47. The SC Letter proves it will be unable to win that battle.

[3]It is far too late in this litigation—over 29 months since fact discovery was completed in the SC Cases, after the Plaintiffs and SC exchanged almost a dozen expert reports, and after the deposition of four experts, three of whom were deposed twice—to permit SC to amend its answers to assert this defense. SC not possibly justify the delay in seeking to assert this defense, and, in any event, the Plaintiffs would be severely prejudiced if this defense were allowed at this late stage, since it conducted discovery and submitted expert reports without this defense being in the case.

**B. The Evidence that SC's Own Due Diligence Chief Distrusted BLMIS and Thought it Would "Explode" Dooms SC's Claim that it is Entitled to Summary Judgment.**

As set forth in the Plaintiffs' Letter, 6, the trial testimony of Sebastian Gonzalez, an SC "relationship manager" (client liaison), will alone be a showstopper. Mr. Gonzalez will testify that, concerned that he might be doing something wrong by *not* recommending Fairfield Sentry to his clients, he asked Samuel Perruchoud, who was in charge of SC's due diligence of Sentry and BLMIS, whether this was okay. In response, Mr. Perruchoud advised Mr. Gonzalez "not to recommend Fairfield because there is something wrong with the fund," told him that the "manager," Madoff, "does not let us see the books," said that he, Mr. Perruchoud, "believe[d] it's going to explode one of these days," and stated that he felt that way because "it is not possible to achieve such high returns with such low volatility" and "that something was wrong." Plaintiffs' Letter, 9/12/14, 6.

The statement by Mr. Perruchoud is admissible under Rule 801(d)(2)(D) because, as required, it clearly "was made by [SC's] agent or employee on a matter within the scope of that relationship and while it existed." SC claims that this evidence would be inadmissible and should be suppressed on another ground. SC Letter, 24 n. 24. But its argument on admissibility is based on inapposite cases, [4] and its reason for suppressing the evidence—that Mr. Gonzalez was never disclosed as a witness—is not

[4] In *Litton Sys., Inc. v. Am. Tel. & Tel. Co.*, 700 F.2d 785, 816 (2d Cir. 1983), the court upheld the trial court's refusal to admit notes made by a corporate attorney investigating possible wrongdoing by company employees. The notes contained multiple hearsay and the proponent made no showing that the employees' statements recounted in the memorandum were made within the "scope of [their] agency or employment," as required under Rule 801(d)(2)(D). In *Thomas v. Stone Container Corp.*, 922 F. Supp. 950, 957 (S.D.N.Y. 1996), the trial court excluded the testimony of a temporary employee of a supplier of the defendant company to the effect that an *unidentified* employee of the defendant company told the witness that the company did not have certain required equipment. There was no evidence that the statement was made by a person authorized to make it or that it concerned a matter within the scope of the that person's employment.

borne out by the record.[5] SC does not dispute, however, that this evidence, alone, could cause a reasonable jury to rule against SC. The jury could reasonably conclude either that Mr. Perruchoud never told his superiors, in which case he acted in bad faith by not reporting his concerns to them, or that he did, in which case *they* acted in bad faith by continuing to recommend Sentry and not advise those who had invested to pull out. Either way, SC will have been shown to have acted in bad faith, which would prevent summary judgment in favor of SC on the Due Diligence Claims.

### C. SC Fails to Show that on the Other Evidence it is Entitled to Summary Judgment on the Due Diligence Claims.

On the basis of the fatal evidence just discussed, the Court need not go further. Nevertheless, SC has failed to show that is entitled to summary judgment on the remaining evidence.

#### 1. SC's Argument Concerning the Nature of the Duties it Owed to its Clients Misstates Florida Law.

SC argues that the Plaintiffs' "argument is based on a *false* due diligence duty of plaintiffs' own creation." It further argues that "[t]here is only one Florida common law duty to conduct due diligence on an investment before recommending it." SC Letter, 19. It then cites *Anwar* [*v. Fairfield Greenwich Ltd.*], 891 F. Supp. 2d [548,] 557 [(S.D.N.Y. 2012)], quoting *Ward v. Atlantic Sec. Bank*, 777 So.2d 1144, 1147 (Fla. Dist. Ct. App. 2001), for the proposition that "whether couched in terms of fiduciary duty, negligence or gross negligence claims, that duty is 'to recommend an investment only after studying it sufficiently to become informed as to its nature, price, and financial prognosis.'" SC

[5] See Plaintiff Headway's Supplemental Responses to the Standard Chartered Defendants' First Set of Interrogatories, served on SC on March 2, 2012, listing Mr. Gonzalez among "the persons with knowledge of any of the allegations contained in the *Headway* Complaint." (Fact discovery in the SC Cases ended May 2, 2012.)

Letter, 22.[6]

This argument is wide of the mark on a number of grounds.

First, SC conflates "duty" and "standard of care". "'In negligence law, the concept of "duty" has two components: (1) the relationship that justifies placing a requirement of care upon the defendant, and (2) the general standard of care that defines the risks to be foreseen by the defendant and the level of care to be imposed upon the defendant.'" *Flynn v. Polk Cnty.*, No. 8:11-CV-2054-T-33AEP, 2013 WL 718747, at *3 (M.D. Fla. Feb. 27, 2013) (applying Florida law) (quoting *Monroe v. Sarasota Cnty. Sch. Bd.*, 746 So. 2d 530, 534 n. 6 (Fla. Dist. Ct. App. 1999)). *See Prosser and Keeton on Torts*, § 53 (5th ed.) ("'[d]uty' is a question of whether the defendant is under any obligation for the benefit of the particular plaintiff," and "[w]hat the defendant must do, or must not do, is a question of the standard of conduct required to satisfy the duty."

In negligence cases, the existence of a duty of care is a question of law, while the exact nature of the duty owed to the plaintiff (or "standard of care") is a jury question. *Selvin v. DMC Regency Residence, Ltd.*, 807 So. 2d 676, 682 (Fla. Dist. Ct. App.

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[6]SC also states, without citing any authority, that SC's duty when making recommendations "[was] breached in the context of fraudulent investments only if plaintiffs can establish the Bank acted in bad faith or willful ignored obvious 'red flags' of BLMIS's Ponzi scheme." Letter, 22. It cites no authority for this audacious proposition, which makes no sense in the context of breach of the Due Diligence Claims, which do not require scienter. SC also resurrects its false argument that "all of plaintiffs' Due Diligence Claims fail because plaintiffs cannot establish that the Bank conducted *no* due diligence." Letter, 19 (emphasis added). This is a plain misreading of the complaints and of the Court's decision in *Anwar v. Fairfield Greenwich, Ltd.*, 745 F.Supp.2d 360, 369 (S.D.N.Y. 2010) ("*SC I*"), which recognized that the Plaintiffs' Due Diligence Claims were based on insufficient due diligence, as opposed to no due diligence at all.

Likewise, SC's asserts, Letter, 23, that *Rich v. Wachovia Bank, N.A.*, 9:08-cv-81575-WPD, 2010 U.S. Dist. LEXIS 59483, at *24 n.5 (S.D. Fla. Apr. 7, 2010) stands for the general proposition that "under Florida law, banks have no due diligence duty to be "clairvoyant in [their] investment recommendations." This assertion is simply not borne out. The *Rich* court found no breach of fiduciary duty when a bank put its customer in auction rate securities (ARS) when, at the time, no ARS auction had ever failed. The court concluded that "[t]o hold otherwise, [sic] would impose a fiduciary duty upon Wachovia to be clairvoyant in its investment recommendations." The facts in these cases are wholly distinguishable from those in *Rich*. Tasking a bank to conduct reasonable due diligence and chase down known "red flags" imposes no duty on it to be "clairvoyant."

2001) ("How the duty of due care should be met in a given case is for the jury;" "peculiarly a jury function to determine what precautions are reasonably required in the exercise of a particular duty of due care . . . . [w]hat is and what is not reasonable care under the circumstances is, as a general rule, simply undeterminable as a matter of law.") (citations omitted).

By contrast, in fiduciary duty cases, "[i]t is a question for the jury to determine whether a fiduciary relationship arose; the nature of that relationship; and whether as a result of the . . . [d]efendants' conduct, there was a breach of the . . . [d]efendants' duty as fiduciaries to [the plaintiff]." *Doe v. Evans*, 814 So.2d 370, 375 (Fla. 2002).

Second, SC does not discuss how the issues of duty and standard of care should be treated on a motion for summary judgment. "The specific standard of care owing under a duty typically involves a factual question which must be submitted to a jury. . . [On summary judgment], a trial judge is authorized to determine the standard of care as a matter of law under undisputed facts in those rare cases in which the movant carries its heavy burden of proof and convinces the judge that no reasonable jury could decide in favor of the plaintiff on the disputed standard of care." *Dennis v. City of Tampa*, 581 So. 2d 1345, 1350 (Fla. Dist. Ct. App. 1991). *Accord Flynn v. Polk Cnty., supra*, 2013 WL 718747, at *3 (quoting *Dennis*). *See Hill v. Bache Halsey Stuart Shields Inc.*, 790 F.2d 817, 824 (10th Cir. 1986) (applying Colorado law).

It is, of course, undisputed that SC owed the each Plaintiffs a duty of ordinary care and fiduciary duties. The next question is the precise nature of those duties, *i.e.*, the standard of care, or how the duty "should be met in a given case." *Selvin, supra*, 807 So.2d at 682.[7]

[7]The only question, SC has admitted from the outset, is "[t]he scope of the fiduciary duties owed to plaintiffs." SC's memorandum in support of motion to dismiss, DE 385 (Mar. 10, 2010), 43.

SC argues that this Court has already decided the case in three decisions on motions to dismiss filed against different complaints filed by different Plaintiffs: "*SC I*", *Anwar v. Fairfield Greenwich Ltd.*, 826 F. Supp. 2d 578, 590 (S.D.N.Y. 2011), and *Anwar v. Fairfield Greenwich Ltd.*, 891 F. Supp. 2d 548, 556 (S.D.N.Y. 2012). Not only are decisions on motions to dismiss fundamentally different from those on summary judgment—the former are decided on the pleadings, the latter on a fully developed factual record—but it is apparent that the Court did not prejudge this issue in ruling on SC's motion to dismiss. In *SC I*, which the Court followed in its other two decisions, the Court held: "Plaintiffs sufficiently state causes of action for breach of fiduciary duty. All Plaintiffs allege that Standard Chartered's recommendation that they invest in the Fairfield Funds without conducting proper diligence was a breach of fiduciary duty." 745 F.Supp.2d at 376. The Court then stated that "[*e*]*ven nondiscretionary broker-dealers* have a duty to 'recommend [investments] only after studying [them] sufficiently to become informed as to [their] nature, price, and financial prognosis'" (*citing Ward*, 777 So.2d at 1147), *Id.* (emphasis added). The quotation from *Ward* shows that the Court intended not to establish the standard of care for trial but to establish a minimum, or floor, of the duty owed by SC ("*even* non-discretionary brokers") on a motion to dismiss. Likewise, in its 2012 *Anwar* decision, the Court noted that "Plaintiffs allege that Standard Chartered was far more than a passive broker who gave advice only on particular occasions," 891 F.Supp., at 557. It is apparent that the Court has not held that *Ward* establishes the standard of care SC owed to its clients when it recommended Sentry.

*Ward* was a bank case but relied on cases involving stockbrokers, *Gochnauer v. A.G. Edwards & Sons, Inc.*, 810 F.2d 1042, 1049 (11th Cir.1987), and *Leib v. Merrill Lynch, Pierce, Fenner & Smith*, 461 F.Supp. 951 (E.D.Mich. 1978), *aff'd*, 647 F.2d 165 (6th Cir.

1981). One of the questions before this Court at this stage is whether a reasonable jury could find that a private bank such as SC has a significantly deeper relationship with its clients than does a stockbroker with a nondiscretionary client. Brokers are generally there to take and execute orders and, from time to time, to provide investment advice, and *Leib*, the case in which the language preferred by SC was first used, is limited to just such "one-off" stockbroker-customer relationships. *See Leib*, 461 F.Supp. at 451-2 ("[T]he customer has a non-discretionary account with his broker. . . . In such cases *all duties to the customer cease when the transaction is closed.*" (emphasis added).

By contrast, private banks like SC promote themselves as providing a far higher level of white-glove services to their wealthy clients. "Private banking activities are generally defined as providing personalized services to higher net worth customers (e.g., estate planning, financial advice, lending, investment management, bill paying, mail forwarding, and maintenance of a residence)." Federal Financial Institutions Examination Council, *Bank Secrecy Act Anti-Money Laundering Examination Manual, available at* https://www.ffiec.gov/bsa_aml_-infobase/pages_manual/OLM_081.htm. The record in this case is replete with evidence that SC's posture with its clients was of such a nature. SC had procedures, on paper at least, that, as an acknowledged fiduciary, it was to follow in approving and monitoring financial "products" for recommendation to its clients, and by "evaluating, on an initial *and ongoing* basis, certain investment products offered to private banking customers at, among other affiliated banks, AEBI and SCBI." SC's responses to Plaintiffs' First Set of Interrogatories, March 28, 2011, at 15-16 (emphasis added).

After a bench trial, a New Jersey court held that the scope of fiduciary duty set forth in *Leib* was inapplicable. "Brokers are engaged to execute stock transactions and

are paid sales commissions. Investment advisers are engaged to give advice and are paid based on the value of the portfolio." *Erlich v. First Nat. Bank of Princeton*, 505 A.2d 220, 235 n.5 (N.J. Ch. Div. 1984) ("Case law, including *Leib*, . . . analyzing the relationship between brokers and their customers is distinguishable from the case at bar. Brokers are engaged to execute stock transactions and are paid sales commissions. Investment advisers are engaged to give advice and are paid based on the value of the portfolio."). Instead, a "higher standard, "the obligation of the investment manager to give prudent advice[,] is the standard of care to be applied in this case." *Id.* at 35. *See* Ryan K. Bakhtiari et. al., *The Time for A Uniform Fiduciary Duty Is Now*, 87 St. John's L. Rev. 313, 319 (2013) (Congress has recognized that investment advisers are held to a higher standard than stockbrokers when making investment recommendations).

Nevertheless, even if the duty as described in *Ward* and *Leib* were applicable to a private bank with ongoing responsibilities, neither case establishes the standard of care, which, under Florida law, is a fact question.[8] Moreover, under Florida law, a jury has assistance in the form of either fact or expert evidence to determine both the standard of care and whether the defendant had met it. *Ins. Co. of the W. v. Island Dream Homes, Inc.*, 679 F.3d 1295, 1298 (11th Cir. 2012) (applying Florida law, holding that plaintiff "was required to present evidence on the standard of care in the roofing industry—either by expert testimony or by presenting testimony of roofing custom").[9] In fact, contrary to

[8]It is plain, in any event, that the exact wording in *Leib* was only a shorthand summary of the well established standard governing brokers making recommendations. *Leib*, 461 F.Supp. at 953, relies onHanly *v. Sec. & Exch. Comm'n*, 415 F.2d 589, 597 (2d Cir. 1969) (stockbroker "cannot recommend a security unless there is an adequate and reasonable basis for such recommendation. He must disclose facts which he knows and those which are reasonably ascertainable. By his recommendation he implies that a reasonable investigation has been made and that his recommendation rests on the conclusions based on such investigation"), and *Hanly* itself cites a 1962 SEC release, 34-6721 (Feb. 2, 1962), *available at* 1962 WL 69442.

[9]In this respect, it is noteworthy that the *Leib* Court cautioned that "the precise manner in which a broker performs these duties will depend to some degree upon the intelligence and personality of his

the entire thrust of SC's argument, Florida law not only permits, but actually *requires*, expert testimony to help the jury understand the duties of persons in a profession or industry where practices and standards are beyond the ken of an average lay person. *Id.* (applying Florida law, holding that plaintiff "was required to present evidence on the standard of care in the roofing industry—either by expert testimony or by presenting testimony of roofing custom") (quoting *AMH Appraisal Consultants, Inc. v. Argov Gavish'ship*, 919 So.2d 580, 581-82 (Fla. 4th Dist.Ct.App.2006) (holding that the standard of care for a property appraiser was "too esoteric to be understood by the average layperson")). Plainly, a jury, unaided by expert and fact testimony, cannot be expected to answer the relevant questions in these cases. Accordingly, SC's complaint that the Plaintiffs rely on their experts (as well as SC's own documents and the testimony of its former key officer) to define the applicable standard of care is to no avail because it is contrary to Florida law.[10]

**2. There is Ample Evidence to Support the Plaintiffs' Theory of the Case.**

The only avenue open to SC, therefore, is to show that no reasonable jury could decide the Fiduciary Duty Claims in the Plaintiffs' favor on the basis of the standard of care outlined in the complaints and in the evidence on which they rely. SC has not made that showing.

SC tries to meet this challenge by mischaracterizing the nature of the Plaintiffs'

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customer." 461 F.Supp. at 953. It follows that other factors will also affect "the precise manner in which a broker performs these duties." This is a further indication that expert and fact testimony would be needed to flush out the nature of the duties owed by SC to its clients.

[10] *In re Old Naples Sec, Inc.*, 343 B.R. 310, 323-24 (M.D. Fla. Bankr. 2006), cited in the SC Letter, 22 "(citing evidence, not expert opinions, establishing that certain red flags were obvious signs of fraud)," is not to the contrary. SC Letter, 22. *Old Naples* found that a stockbroker breached fiduciary duties and was negligent in failing to investigate "red flags" that should have indicated "something was wrong" in an investment that turned out to be a Ponzi scheme. Despite SC's parenthetical notation to the citation, however, *Old Naples* does not indicate one way or the other whether the court, at trial, heard expert testimony.

claims as being based on a duty to have concluded that BLMIS was engaged in a Ponzi scheme. SC Letter, 22, 24 & n. 24. This is not the first time the Plaintiffs have had to correct this characterization of these claims. See response to motion to dismiss, May 3, 2010, DE 445, 32-33 ("the Plaintiffs have not alleged that Standard Chartered was at fault for not discovering that Madoff was conducting a Ponzi Scheme: the allegations are that the bank was at fault for not recognizing from the numerous red flags that flew all around Madoff that an investment with Madoff was overly risky.").[11]

On summary judgment, the question is whether any evidence exists on which a reasonable jury could find that SC failed to fulfill its duties insofar as its due diligence of Sentry and BLMIS was concerned, and that its actions and omissions caused the Plantiffs' losses. There is a mountain of evidence supporting such a finding, summarized in the Plaintiffs' Letter—undisputed fact evidence and admissible[12] sworn

[11]To try to buttress the point, SC cites to 10 cases that it says have held "that the supposed 'red flags' surrounding BLMIS and the SSC strategy were not obvious indicia that BLMIS was operating a Ponzi scheme," and claims that "plaintiffs' experts did not dispute" this assertion. SC Letter, 23 n. 24. The cases cited are inapposite. First, as noted, the Plaintiffs have not alleged that SC had an absolute duty to discover that BLMIS was running a Ponzi scheme. Second, the plaintiffs did nothing more than allege that the defendant could have or should have seen the red flags, but that they failed to do so. Here, in contrast, there is evidence that SC had actual knowledge of red flags and should have caused it to walk away or conduct further investigation, and having not satisfactorily resolved those issues, should not placed its clients in Sentry. Finally, SC points to no testimony or report that indicates or implies the supposed agreement of the Plaintiffs' experts with this position.

[12]The only weak parry offered by SC at the Plaintiffs' expert witnesses is that they did not review BLMIS' (phony) trading records. SC Letter, 22 & n. 21. For the dual propositions that this disqualifies them as experts and results in there being "no admissible evidence that the trading reported by BLMIS was implausible," SC cites no legal authority, nor could it. An expert may base an opinion on even inadmissible facts or data "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject." Fed.R.Evid. 703. The Plaintiffs' experts relied on records ("tear sheets") supplied by FGG to SC summarizing and analyzing Sentry's monthly trading results from 1990 on to, eventually, the fall of 2008, and so did all three of SC's purported experts, including the one SC dropped after his criminal conviction; they looked at only a very small number of trade tickets. Porten Report, 12/2/12, 17, 44; Zask Report, 12/1/12, 40; Ziff Report, 3/3/14, App. B, 16. What is more, in 2003, SC itself relied on the same tear sheets in deciding whether to approve Sentry for recommendation to its clients. Plts.Dep.Ex. 10. Thus, there is no question this is the very kind of evidence on which experts of this type rely, and, assuming they are deemed qualified to offer expert testimony, the Plaintiffs' experts' testimony will be able to opine on whether BLMIS's trading results were implausible even if that testimony is based on the tear sheets and not individual trading tickets. *See Garnac Grain Co. v. Blackley*, 932 F.2d 1563,

testimony of the Plaintiffs' two expert witnesses—and by the Plaintiffs' undersigned Liaison Counsel at the September 29, 2014 hearing. Transc., 9/29/14, 38-42.

SC has no effective response, but as a final salvo, claims that "[t]hat duty [stated in *Leib*] is breached in the context of fraudulent investments only if plaintiffs can establish the Bank acted in bad faith or willful ignored obvious 'red flags' of BLMIS's Ponzi scheme." SC Letter, 22. SC follows that statement with nothing more than the citation to *In re Old Naples Sec, Inc.*, 343 B.R. 310 (M.D. Fla. Bankr. 2006) discussed in n. 11, *supra*. *Old Naples* says nothing of the sort, and SC offers no other authority.

On the other hand, *Old Naples*, which involved a broker-dealer's recommendations that its clients invest in what turned out to be a Ponzi scheme, serves as a primer for why SC is not entitled to summary judgment on the Due Diligence Claims. The Trustee of the firm sued the President and President and CEO of the firm for negligence and breach of fiduciary duty. The claim that was certain "red flags ... put[ ] [the defendant] on notice of the questionable nature of the [fraudulent] Transactions." The evidence at the bench trial showed that normal clearing procedures were not followed, customary transaction documentation was not available, the claimed rate of return was very high, client funds went to the wrong entity, etc. 343 B.R. at 322. The Court concluded: "Given these 'red flags,' and confronted with these issues, [the President and CEO] should have investigated the Transactions and taken steps to ensure that the investments he was recommending to his clients were proper. . . before recommending the investment to his clients. Failing to do this, [he] breached his fiduciary duty to his clients." *Id.*, at 323, 324.

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1567 (8th Cir. 1991), *opinion modified on denial of reh'g* (July 30, 1991) (holding admissible expert testimony attacking defendant accounting firm's audit although expert reviewed only another CPA's report on defendant's audit and only later reviewed).

The details of the specific "red flags" aside, this is a perfect description of the Due Diligence Claims the Plaintiffs have asserted against SC, and mandate the Court's finding that a reasonable jury could find that SC liable, as described in the Plaintiffs' Letter.[13]

## III.

## SLUSA DOES NOT BAR THE PLAINTIFFS' CLAIMS

SC is not entitled to judgment under SLUSA for three separate reasons: (i) the Complaints are not a "covered class action;" (ii) the nub of the breach of fiduciary duty and negligence claims is not that SC, or anyone, made material misrepresentations or omissions; and (iii) any alleged misrepresentations and omissions were not made "in connection with the purchase or sale of covered securities."[14] We deal with these issues in turn.

### A. The SC Cases Are Not a Covered Class Action

#### 1. Introduction

To be covered by SLUSA, the cases must be a "covered class action." This term covers three kinds of suits. The first two are a single lawsuit in which damages are sought on behalf of more than 50 persons or class representatives, and a single lawsuit

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[13]SC also claims that, if given a chance, it can show that those Plaintiffs who have sued SC for fraud or negligent misrepresentation cannot defeat summary judgment on those claims. SC Letter, 24-5. SC makes no reference to any of the Plaintiffs who have brought these claims other than Plaintiff Joquina Teresa Barbachano and does not cite to any evidence that it could muster. This is an insufficient showing to enable the Plaintiffs to respond to this claim. Further, the statement, *id.*, 25 n. 26, that "only one plaintiff ever pled a fraud or negligent misrepresentation claim based on the nondisclosure of [trailer] fees" ignores the fact that the Court denied motions to amend at least one complaint so to allege. *Anwar v. Fairfield Greenwich Ltd.*, No. 09-cv-CIV-118, 2012 WL 1415621 (S.D.N.Y. Apr. 13, 2012), *reconsideration denied*, 283 F.R.D. 193 (S.D.N.Y. 2012).

[14]SLUSA is decided on a claim-by-claim basis, so claims not barred by SLUSA are not precluded. *Dabit v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 395 F.3d 25, 47 (2d Cir. 2005) (holding that claims not triggering preemption under SLUSA are not precluded), *vacated on other grounds sub nom. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 547 U.S. 71 (2006). *Accord, In re Lord Abbett Mut. Funds Fee Litig.*, 553 F.3d 248, 253 (3d Cir. 2009). As a result, even if the Court deems some of the Plaintiffs' claims precluded, it may not, under *Dabit*, dismiss the remaining claims under SLUSA.

in which one or more named parties seek damages in a representative capacity on behalf of unnamed persons. 15 U.S.C. § 78bb(f)(5)(B)(i). The third, which SC argues is applicable, is "any group of lawsuits filed in or pending in the same court and involving common questions of law or fact, in which—(I) damages are sought on behalf of more than 50 persons; and (II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose." 15 U.S.C. § 78bb(f)(5)(B)(ii).

Citing *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71, 86 (2006), which broadly construed SLUSA's "in connection with" provision, SC argues that SLUSA's "covered class action" provision should be read broadly, too. SC Letter, 7. As this Court recognized in *Anwar v. Fairfield Greenwich Ltd.*, 728 F.Supp.2d 372, 387 (S.D.N.Y. 2010) (*"Anwar II"*), however, *Dabit* said that SLUSA's "in connection with" must be read broadly, as had always been the case with the identical language in section 10(b) of the Securities Exchange Act, 15 U.S.C. § 78j(b) and rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5. The "covered class action" provision in question, however, has no counterpart elsewhere in the securities laws. And because that provision could interfere with "individual lawsuits"—which, as we show below, Congress expressly stated it did not intend to preclude—it demands a *strict* or *narrow* reading. *See, Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (recognizing presumption against Congressional intent to preempt state law claims).[15]

[15]In *Dabit*, the Supreme Court acknowledges the established presumption that Congress intended to preempt state-law causes of action, citing *Medtronic v. Lohr, supra*, but then adds: "But that presumption carries less force here than in other contexts because SLUSA does not actually pre-empt any state cause of action. It simply denies plaintiffs the right to use *the class-action device* to vindicate certain claims. The Act does not deny any individual plaintiff, or indeed any group of fewer than 50 plaintiffs, the right to enforce any state-law cause of action that may exist." 547 U.S. at 87. The Court was not addressing, however, the kind of "covered class action" that SC claims is involved here, where a broad reading of the statute necessary to rope in these cases would conflict with the presumption acknowledged in *Dabit* against preempting state law claims and the stated Congressional intent in SLUSA not to interfere with individual lawsuits. This reinforces the need for a narrow reading of 15 U.S.C. § 78bb(f)(5)(B)(ii).

### 2. "Group of Lawsuits" Does Not Encompass These Cases

The first issue, of course, is the meaning of the provision in question, and, in particular, of the phrase "group of lawsuits."[16] The Court should look not only to the words by themselves but also to the context in which they appear. *McNeill v. United States*, 131 S. Ct. 2218, 2221 (2011); *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997).[17]

The Court should start with the findings contained in section 2 of SLUSA, an integral part of the statute.[18] Subsections 2(2) and (3) of SLUSA state that, since the passage of the PSLRA, "a number of securities class action lawsuits have shifted from Federal to State courts," which "has prevented that Act from fully achieving its objectives." (This speaks to a determined, coordinated attempt in class actions *filed as such* to evade the effects of the PSLRA.) In Subsection 2(5), Congress determined the need to "enact national standards for securities class action lawsuits involving nationally traded securities, while preserving the appropriate enforcement powers of State securities regulators *and not changing the current treatment of individual lawsuits.*" (emphasis

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[16]The Court should not be influenced in interpreting this provision by SC's speculative and inaccurate assertions concerning the circumstances surrounding the filing of the various SC Cases and the motivations of the Plaintiffs and their counsel. Thus, SC asserts that the Plaintiffs and their lawyers collectively schemed to evade the strictures of the Private Securities Litigation Reform Act by purposely filing only state law claims. SC adds that the Plaintiffs' "claims here are based on alleged wrongdoing originally pled as federal securities fraud claims," and that "knowing" that they could not sue under section 10(b) and Rule 10b-5, "evaded the dictates of the PSLRA" by bringing only state law claims. Finally, SC states that "SLUSA's remedial purpose would be undermined completely if plaintiffs could evade it simply by engaging separate counsel and claiming lack of intent to 'join.'" SC Letter, 8-9, 11-12. There is no evidence to support these assertions, and, as set forth *infra*, 19-21, and in Ex. 1 hereto, the facts are totally to the contrary.

If the Court needs confirmation, enclosed as Ex. 2 are letters to the Court from each of the Plaintiffs' attorneys (other than the undersigned) attesting to the fact that there was no concerted action among the various Plaintiffs' counsel in filing the complaints that were filed. The undersigned attorney so represents in this letter.

[18]Even in the case of an unambiguous statute, courts review legislative findings to divine legislative intent. *Gen. Dynamics Land Sys., Inc. v. Cline*, 540 U.S. 581, 589-90 (2004); *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 484 (1999). *See McCreary Cnty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 861 (2005) ("Examination of purpose is a staple of statutory interpretation that makes up the daily fare of every appellate court in the country.").

added). This means that a court should be careful not to encompass individual lawsuits within SLUSA's reach, *i.e.*, construe this provision narrowly.

The word "group" is not defined in the statute, thus ordinarily requiring it to be given its ordinary meaning. *Sebelius v. Cloer*, 133 S. Ct. 1886, 1893 (2013). Resort to a dictionary is, of course, an accepted method of determining ordinary meaning. Pertinent definitions[19] strongly point to a *purposeful* gathering together. The issue is not, as SC suggests, SC Letter, 10, simply whether the Plaintiffs were involuntarily thrown together, at SC's insistence, after they were filed, but rather whether the *filing* of the different lawsuits was part of a joint purposeful plan. Otherwise, each separate plaintiff (or those combining in one lawsuit) will be penalized just because, as it turned out, SC injured so many of its clients by recommending they invest in Sentry, some of whom were willing to sue to vindicate their rights. That, indeed, would be "a result demonstrably at odds with the intentions of its drafters." *United States v. Ron Pair Enter., Inc.*, 489 U.S. 235, 242 (1989).

Finally, to the extent that the statutory language is ambiguous—"capable of being understood in two or more possible senses or ways," *Chickasaw Nation v. United*

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[19]The pertinent definitions of "group" in the online edition of the authoritative *Webster's Third New International Dictionary*, http://unabridged.merriam-webster.com, are as follows:

> 2.b: an assemblage of objects regarded as a unit because of their comparative segregation from others
> 3: a number of individuals bound together by a community of interest, purpose, or function: such as
> a(1): a social unit comprising individuals in continuous contact through intercommunication and shared participation in activities toward some commonly accepted end
> (2): class
> (3): a relatively small number of persons associated formally or informally for a common end or drawn together through an affinity of views or interests.

*See also The New International Webster's Comprehensive Dictionary of the English Language* (1996), at 559, defining "group" to mean "a number of persons . . . existing or brought together; an assemblage; cluster"; defining "assemblage" to mean "an assembling," *id.*, at 87; and defining "assemble" to mean "to collect or convene; come together; congregate, as a group or meeting." *Id.*

*States*, 534 U.S. 84, 90 (2001)—resort to legislative history is appropriate. The phrase "group of lawsuits," as used here, is, *at worst*, ambiguous. Therefore, this Court can and should look to SLUSA's legislative history to interpret the phrase. That history reinforces the interpretation arising from examining the words in context.

The Conference Report on SLUSA, contained in H.R. Conf. Rep. No. 803, 105th Cong., 2d Sess. 1998, makes the legislative intent behind SLUSA's passage clear: "The purpose of this title is *to prevent plaintiffs from seeking to evade the protections that Federal law provides against abusive litigation by filing suit in State, rather than in Federal, court.* The legislation is designed to protect the interests of shareholders and employees of public companies that are the target of meritless 'strike' suits." *Id.* at 13 (emphasis added). There is, of course, no evidence of any such purpose or scheme here.

The Report's discussion of "covered class action" further supports the conclusion that, in expanding the definition of class action beyond those labeled or otherwise pleaded as such, Congress did not intend to cover the SC cases:

> 'Class actions' that the legislation bars from State court include actions brought on behalf of more than 50 persons, actions brought on behalf of one or more unnamed parties, and so-called 'mass actions,' in which a group of lawsuits *filed in the same court* are joined or otherwise proceed as a single action. (emphasis added) *Id.*

While the actual language of SLUSA is "filed in *or pending in* the same court," the wording in the Conference Report is additional evidence of Congress's true intent, which is inhibiting plaintiffs' class action lawyers' ability to scheme to "beat" the PSLRA.[20]

The Conference Report then specifically zeros in on "plaintiffs' lawyers [who] have sought to circumvent the Act's provisions by exploiting differences between

[20]The "mass action" reference is to "mass actions and all other procedural devices that might be used to *circumvent* the class action definition." S. REP. 105-182, S. Rep. No. 182, 105TH Cong., 2d Sess. 1998, 1998 WL 226714 (Leg.Hist.), 8 (emphasis added).

Federal and State laws by filing frivolous and speculative lawsuits in State court, where essentially none of the Reform Act's procedural or substantive protections against abusive suits are available." *Id.* at 15. This is further evidence that Congress intended to cover evasive *collusive* or *collective* action, not a situation like this, where, as is set forth next, unrelated, different parties represented by different lawyers filed separate actions against SC at different times and got involuntarily thrown into a foreign court of the defendant's choosing. SC's attempt to manufacture such evasive collusive or collection action out of whole cloth does not make it so.

**3. The SC Cases are Separate Actions Wholly Independent of One Another and Not the Product of Collusion or even Cooperation among the Plaintiffs or their Counsel.**

Ex. 1 hereto lists, chronologically, all of the pending SC Cases (and those cases in which SC was sued over Sentry and that were dismissed or stayed pending arbitration.) The original four cases were brought by four different lawyers in two different jurisdictions on behalf of different clients at different times in three different jurisdictions: state courts in Florida and California (removed by SC to federal courts), and federal courts in Florida, California and New York. Later, numerous other cases were filed at various times against Standard Chartered, either directly in this Court or in the Southern District of Florida, and the Florida cases were transferred to this Court. 41 such cases, involving 54 named Plaintiffs, were filed by one lawyer, Laurence E. Curran II, who had filed one of the four original cases (*Lopez*).[21] 6 cases were filed by a second lawyer, 1 by a third lawyer, 1 by a fourth lawyer, 2 by a fifth lawyer, and 1

[21]The SC Plaintiffs, other than those Plaintiffs represented by Mr. Curran, are constrained to point out that the actions brought by Mr. Curran, which exceed 50 plaintiffs, are far closer to being "covered class action" than the remaining SC Cases. None of the other counsel had anything to do with the bringing of those actions. Mr. Curran is separately addressing whether his clients' actions should be aggregated in this manner. Of course, even if they were, they still would not be barred by SLUSA because their claims, like those in the remaining SC Cases, do not satisfy the "in connection with" test.

by a sixth lawyer. The 56 pending cases[22] were thus filed by 9 different lawyers from April 2009 (*Headway*) to December 2012 (*Optic Blue*). And, contrary to SC's statement that the Plaintiffs' cases "are based on alleged wrongdoing originally pled as federal securities fraud claims," SC Letter, 8, only one, *Lopez*, ever involved a federal securities law claim, which was dismissed long before discovery began.

One additional fact is highly significant. 39 lawsuits were filed before the number of individual Plaintiffs exceeded 50 in number—the 39th being filed on July 12, 2011, about 27 months after the first SC lawsuit was filed. This alone dispels the notion that these cases were brought with a common intention of avoiding the PSLRA.

At SC Letter, 9, SC cites cases holding that some individuals' lawsuits were part of a group of more than 50 lawsuits and thus were a "covered class action." Each case is inapposite. They were either joined with actual class actions making identical accusations (not the case here, since *Anwar* and the SC Cases are fundamentally different, with non-overlapping sets of defendants and claims), or involved multiple lawsuits making identical accusations, all brought by the same lawyers.[23] Thus, they are all factually distinguishable from these cases.

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[22] 5 other cases, brought by 4 different lawyers, have been dismissed or stayed pending arbitration and thus are no longer "SC Cases." See Ex. 1.

[23] *Markey v. Citigroup, Inc.*, No. 09 MD 2070 (SHS), 2013 WL 6728102, at *5 (S.D.N.Y. Dec. 20, 2013), involved a state law claim by two employees of a corporation alleging misrepresentations and omissions by the corporation in touting the stock to its employees. Without the plaintiffs' objection, the action was consolidated with pending class actions with similar allegations. Here, the SC Plaintiffs objected to transfer and consolidation and, while consolidated for pretrial purposes with *Anwar*, proceed on fundamentally different theories against different defendants than those sued in *Anwar*, in recognition of which they are proceeding on a different procedural track from *Anwar*, with separate discovery scheduling orders, confidentiality orders, etc. In *Amorosa v. Ernst & Ernst* LLP, 682 F.Supp. 2d 351 (S.D.N.Y. 2010), a state law claim was filed by a single plaintiff alleging misrepresentations and omissions. When the action was filed, the Plaintiff noted a pending class action making the same allegations as a "related action." His second amended complaint "incorporated by reference" 650 paragraphs from a pending class action and his lawyer stealthily coordinated his case with similar actions brought one law firm on behalf of over 50 people. *In re WorldCom, Inc. Sec. Litig.*, 308 F.Supp.2d 236 (S.D.N.Y. 2004) involved 10 actions alleging misrepresentations and omissions by a company. All 10 actions were filed by the same attorneys in Mississippi state courts and involved 293 plaintiffs, each complaint a verbatim copy of the others, and consolidated, without the plaintiffs' objection, with class actions.

**B. The "In Connection with" Test is not Satisfied**

Even if the SC Cases are a "covered class action," they do not satisfy the "in connection with" test. That test consists of two parts: first, misrepresentations or omissions of material fact (or a manipulative and deceptive device), and second, "in connection with the purchase or sale of a security."

To try to satisfy the first leg of the test, SC contends that the "fundamental allegation" or "gravamen" of the SC Cases is "omissions and representations about the Fairfield Funds and BLMIS." SC Letter, 2, 11. It is obvious, however, that the nub of the various breach of fiduciary duty and negligence claims is that SC breached its duty to conduct proper inquiry into Sentry and BLMIS before it recommended that its clients invest in Sentry, and failed thereafter to monitor these investments. "Breach of fiduciary duty and fraud are different claims. . . . [B]reach of fiduciary duty claims need not be based on an actionable misstatement or omission, but may rest on a charge that the fiduciary has failed to fulfill its duty." *Xpedior Creditor Trust v. Credit Suisse First Boston (USA) Inc.*, 399 F. Supp. 2d 375, 383 (S.D.N.Y. 2005). To determine whether a claim is eligible to be dismissed under SLUSA,

> a court must determine whether the state law claim relies on misstatements or omissions as a 'necessary component' of the claim. In this context, 'necessary component' encompasses both technical elements of a claim as well as factual allegations intrinsic to the claim as alleged. Thus, under the necessary component test, a complaint is preempted under SLUSA only when it asserts (1) an explicit claim of fraud (*e.g.*, common law fraud or fraudulent inducement), or (2) other garden-variety state law claims that 'sound in fraud.' But SLUSA does not preempt claims 'which do not have as a necessary component misrepresentation[s], untrue statements, or omissions of material facts' made in connection with the purchase or sale of a security.

*Xpedior Creditor Trust v. Credit Suisse First Boston (USA) Inc.*, 341 F. Supp. 2d 258, 266 (S.D.N.Y. 2004) (holding claims not barred by SLUSA because fraud not "necessary

component" of breach of fiduciary claims). *Accord LaSala* v. Lloyds TSB Bank, PLC, 514 F. Supp. 2d 447, 473 (S.D.N.Y. 2007) (citing *Xperdior* and holding breach of contract claims not involving fraud not precluded); *Paru v. Mut. of Am. Life Ins. Co.*, No. 04-cv-6907, 2006 WL 129828, at * (S.D.N.Y. May 11, 2006) (citing *Expedior*; breach of fiduciary claim not founded in fraud). *See also Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 472 (1997) (absent manipulation or deception, breaches of fiduciary duty not within ambit of securities laws).

Fraud is not a "necessary component" of the Due Diligence Claims. They are based on SC's failure to adhere to industry standards concerning pre-recommendation and ongoing due diligence. And SC cannot show that the misrepresentation and omissions claims that are pending—not all Plaintiffs have brought such claims; see Ex. 1—are founded on misrepresentations and omissions of material fact that "relate to the nature of the securities, the risks associated with their purchase or sale, or some other factor with similar connection to the securities themselves," and therefore come within the reach of the "in connection with" language. *Grund v. Delaware Charter Guarantee & Trust Co.*, 788 F. Supp. 2d 226, 241 (S.D.N.Y. 2011) *on reconsideration*, No. 09 CIV. 8025, 2011 WL 3837146 (S.D.N.Y. Aug. 30, 2011) (omitting citations) (citing *Xpedior*). The fraud or negligent misrepresentation claims that SC failed to disclose that BLMIS, not Sentry/FGG, made all the investment decisions were about operational risks faced by Sentry, not about the nature or risk of investing in "covered securities" *per se*. And the fraud or negligent misrepresentation claims that SC failed to disclose kickbacks from FGG are about the relationship between SC and FGG and SC's self-interest in recommending Sentry.

With respect to the second ("connectivity") leg of the test, SC's argument is based on the two *Herald* cases, *In re Herald*, 730 F.3d 112 (2d Cir. 2013) ("*Herald I*") (dismissing state law claims against BLMIS's banks under SLUSA), and *In re Herald*, 753 F.3d 110 (2d Cir. 2014) ("*Herald II*") (denying the request for rehearing and rehearing *en banc* of *Herald* I). According to SC, the Second Circuit "held that investments in feeder funds to BLMIS's SSC strategy are sufficient to satisfy SLUSA's 'covered securities' element." SC Letter, 11-12. [24]

Manifestly, however, SC misapprehends the holdings in the two *Herald* decisions. *Herald I* held that the allegations "that JPMorgan and BNY knew of the fraud, failed to disclose the fraud, and helped the fraud succeed—in essence, that JPMorgan and BNY were complicity [sic] in Madoff's fraud"—satisfied the "in connection with" test. 730 F.3d at 119. As the court further explained, "on the very face of plaintiffs' complaints, the liability of JPMorgan and BNY is predicated *not on* these banks' relationship with plaintiffs *or their investments in the feeder funds* but on the banks' relationship with, and alleged assistance to, Madoff Securities' Ponzi scheme." 730 F.3d at 117-18 (emphasis added).

*Herald II* focused on whether a different result was required after *Chadbourne & Parke LLP v. Troice*, ___ U.S. ___, 134 S.Ct. 1058 (2014), in which the Supreme Court held that "[a] fraudulent misrepresentation or omission is not made 'in connection with' . . . a 'purchase or sale of a covered security' unless it is material to a decision by one or more individuals (other than the fraudster) to buy or to sell a 'covered security.'" *Id.*, 134 S.Ct. at 1066. The *Herald II* court concluded that *Herald I* survived *Troice*: "Madoff

[24] SC's reliance on a pre-*Troice* case, *Romano v. Kazacos*, 609 F.3d 512 (2d Cir. 2010), is to no avail. *Romano* applies the rule 10b-5 "coincide" test of connectivity set forth in two pre-*Troice* Supreme Court decisions, *SEC v. Zandford*, 535 U.S. 813 (2002), and *United States v. O'Hagan*, 521 U.S. 642 (1997), and, of course, precedes *Troice*. *Romano* is also distinguishable because the misrepresentations and omissions about the purchase and sale of covered securities were made by the fraudsters directly to the plaintiffs.

Securities, by contrast [with the bank in *Troice*], fraudulently induced attempted investments in covered securities, albeit through feeder funds (not alleged in the instant complaints as anything other than intermediaries) *and the defendant banks are alleged to have furthered that scheme.*" 753 F.3d, at 113 (emphasis added).

*Herald I* and *Herald II* are thus inapposite. First, *Herald* turned on the defendant banks' *complicity* with BLMIS, but in the SC Cases, no such relationship or complicity is alleged. Curiously, SC studiously ignores the fact that both *Herald* decisions were grounded on the alleged complicity of the Banks with BLMIS. Second, the *Herald II* court referred to the feeder funds through which the plaintiffs invested as "not alleged in the instant complaints as anything other than intermediaries." 753 F.3d at 113. This Court has already found that the Sentry funds cannot be so characterized. In its August 28, 2010 decision in *Anwar II*, *supra*, 728 F.Supp.2d at 398, this Court found that "the [Sentry] Funds were not a cursory, pass-through entity. The Funds also placed up to 5 percent of their assets in non-Madoff investments, a relatively small portion overall but representing many millions of dollars."[25] By contrast, the two complaints involved in the appeal in *Herald* both alleged that all of the feeder funds in those cases were 100% invested in BLMIS. 1:09-cv-00289-RMB-HBP Document 193-7 (*Davis*); Case 1:09-cv-00289-RMB-HBP Document 193-1 (*Repex/Trezziova*). What is more, one of SC's own purported expert itself asserts that FGG provided substantive protection to investors.[26]

Thus, this Court, in *Anwar II*, after noting that the Funds were not mere pass

[25]Documents produced by SC in discovery show that the Court was absolutely correct in concluding that Sentry was not a "cursory, pass-through entity." Each year's Sentry financial statements showed between $66 million and $219 million invested in non-BLMIS-related investments.

[26]According to the Rule 26 report of Bradley Ziff, one of SC's purported expert witnesses, Sentry and its sponsor, Fairfield Greenwich, had substance. Thus, Mr. Ziff stated that FGG "oversaw operations, assets and trading activities at BLMIS, including having 'full transparency on a daily basis to the holdings level data in the portfolio,'" and "FGG added [value] for investors in its funds" by supposed extensive due diligence on its managers).

through entities, held that the "in connection with" test was not met because "stretching SLUSA to cover this chain of investment—from Plaintiffs' initial investment in the Funds, the Funds' reinvestment with Madoff, Madoff's supposed purchases of covered securities, to Madoff's sale of those securities and purchases of Treasury bills—snaps even the most flexible rubber band." Given that the Plaintiffs are one step further removed from BLMIS than the plaintiffs in *Anwar SLUSA*, if applying SLUSA to that case would have snapped the SLUSA "rubber band," applying SLUSA here would positively shred it.[27]

SLUSA, therefore, does not preclude any of the Plaintiffs' claims.

**CONCLUSION**

For the reasons stated, SC is not entitled to summary judgment, and the Court should not exalt form over substance by permitting SC to file a futile motion.

Sincerely yours,

The Brodsky Law Firm, PL

Richard E. Brodsky

Attachments as noted

cc: Counsel of record in SC Cases

The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by Standard Chartered plaintiffs.

SO ORDERED.

1-7-15
DATE

VICTOR MARRERO, U.S.D.J.

[27]To try to distinguish *Anwar* from this case, SC argues that "[u]nlike the allegedly misleading investment advice in SCB Cases, the Anwar Class Action focused on allegations that FGG, PwC and Citco ignored obvious 'red flags' of BLMIS's fraud in their roles as the Fairfield Funds' creator, manager and service providers. *Id.* at 389. But this argument falls flat because, despite the dogged effort by SC to mischaracterize the gravamen of the Plaintiffs' breach of fiduciary duty and negligence claims, such is the very essence of these claims.

**EXHIBIT 1 TO LETTER TO**
**HONORABLE VICTOR MARRERO**
**FROM STANDARD CHARTERED PLAINTIFFS**
**09-cv-118**
**November 17, 2014**

## PENDING STANDARD CHARTERED CASES

| Order Of Case | Name Of Case | Date Filed | District Where Filed | Number Of Plaintiffs | Running Total Of Plaintiffs In All Cases | Plaintiffs' Counsel | Claims Brought[1,2] |
|---|---|---|---|---|---|---|---|
| 1 | *Headway Investment Corp. v. American Express Bank Ltd., et al.*, No. 09-CV-08500 | 4/6/2009 | United States District Court for the Southern District of S.D. Fla. ("S.D. Fla.")[3] | 1 | 1 | Rivero Mestre LLP | • Breach of fiduciary duty<br>• Negligence<br>• *Unjust Enrichment* |
| 2 | *Lopez v. Standard Chartered Bank Int'l. (Americas) Ltd., et al.*, No. 10-CV-00919 | 10/12/2009 (amended)<br><br>8/19/2009 (original) | S.D. Fla. | 1 | 2 | Curran & Associates | • *Section 10(b) of the Exchange Act15 U.S.C. § 78j(b) and Rule 10b-5 promulgated thereunder*<br>• *Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a)*<br>• *Rescission under the Investment Advisors Act, 15 U.S.C. § 80b-1 et seq.*<br>• Breach of Fiduciary Duty<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust*<br>• *Fraud* |
| 3 | *Valladolid v. American Express Bank Ltd.*, No. 09-CV-06937 | 9/4/2009 | United States District Court for the Central District of California[4] | 1 | 3 | Aguirre & Severson LLP | • Breach of fiduciary duty<br>• Negligence<br>• *Unjust Enrichment* |
| 4 | *Maridom Ltd., v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 10-CV-00920 | 10/13/2009 (amended)<br><br>9/24/2009 (original) | S.D. Fla. | 3 | 6 | The Brodsky Law Firm, PL | • Breach of fiduciary duty<br>• Negligent misrepresentation<br>• Fraud[5] |
| 5 | *Almiron v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 10-CV-20763 | 2/19/2010 | S.D. Fla.[6] | 1 | 7 | Jones & Adams, P.A. | • *Fla. Stat. § 517.301*<br>• Breach of Fiduciary Duty<br>• Negligence<br>• *Negligent Misrepresentation*<br>• *Unjust Enrichment and Constructive Trust* |
| 6 | *Carrillo v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 10-CV-20762 | 2/19/2010 | S.D. Fla.[7] | 1 | 8 | Jones & Adams, P.A. | • *Fla. Stat. § 517.301*<br>• Breach of Fiduciary Duty<br>• Negligence<br>• *Negligent Misrepresentation*<br>• *Unjust Enrichment and Constructive Trust* |
| 7 | *Gerico, Inc., et al. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-cv-0909 | 12/10/2010 | S.D. Fla. | 2 | 10 | Marko & Magolnick, P.A. | • Breach of Fiduciary Duty<br>• *Fraud in the Inducement*<br>• *Fraudulent Concealment*<br>• *Negligent Misrepresentation*<br>• Negligence |

[1] Underlined claims were dismissed in *Anwar IV*, DE 744, but were subsequently allowed to be re-pleaded as a uniform negligence claim. *See* DE 1137.
[2] Italicized claims were dismissed.
[3] Removed from the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida.
[4] Removed from the Superior Court of the State of California, County of Los Angeles.
[5] Negligence was pleaded in the alternative if it were determined that SC did not owe the Plaintiffs fiduciary duties.
[6] Removed from the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida.
[7] Removed from the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida.

| Order Of Case | Name Of Case | Date Filed | District Where Filed | Number Of Plaintiffs | Running Total Of Plaintiffs In All Cases | Plaintiffs' Counsel | Claims Brought[1,2] |
|---|---|---|---|---|---|---|---|
| 8 | *Baymall Invs. Ltd. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-7649 | 9/6/2011 | S.D. Fla. | 1 | 11 | Marko & Magolnick, P.A. | • Breach of Fiduciary Duty<br>• *Fraudulent Concealment*<br>• Negligence |
| 9 | *Blockbend Ltd. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-7650 | 8/30/2011 | S.D. Fla. | 1 | 12 | Marko & Magolnick, P.A. | • Breach of Fiduciary Duty<br>• *Fraudulent Concealment*<br>• Negligence |
| 10 | *Escobar, et al., v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-23120 | 8/30/2011 | S.D. Fla. | 2 | 14 | Marko & Magolnick, P.A. | • Breach of Fiduciary Duty<br>• *Fraudulent Concealment*<br>• Negligence |
| 11 | *Eastfork Assets Ltd. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-7653 | 9/06/2011 | S.D. Fla. | 1 | 15 | Marko & Magolnick, P.A. | • Breach of Fiduciary Duty<br>• *Fraudulent Concealment*<br>• Negligence |
| 12 | *Mailand Invs., Inc. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-5732 | 7/25/2011 | S.D. Fla. | 1 | 16 | Marko & Magolnick, P.A. | • Breach of Fiduciary Duty<br>• *Fraudulent Concealment*<br>• Negligence |
| 13 | *Saca v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-3480 | 5/20/2011 | United States District Court for the Southern District of New York ("S.D.N.Y.") | 3 | 19 | Sonn & Erez, PLC<br><br>Napoli Bern Ripka and Associates, LLP | • *Negligent Misrepresentation*<br>• Negligence<br>• Breach of Fiduciary Duty<br>• Gross Negligence |
| 14 | *Barbachano Herrero v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-3553 | 10/24/2012 (amended)<br><br>12/9/2010 (original) | S.D. Fla. | 1 | 20 | Katz, Barron, Squitero, Faust, Friedberg, English & Allen, P.A. | • *Investment Fraud - Fla. Stat. §§ 517.301, 517.211*<br>• Breach of Fiduciary Duty<br>• *Fraud*<br>• Gross Negligence<br>• *Negligent Misrepresentation* |
| 15 | *Asensio v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-0908 | 12/10/2010 | S.D. Fla. | 1 | 21 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 16 | *Auburn Overseas Corp. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-0904 | 12/10/2010 | S.D. Fla. | 1 | 22 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 17 | *Interland Invs. Corp. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-0905 | 12/10/2010 | S.D. Fla. | 1 | 23 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |

| Order Of Case | Name Of Case | Date Filed | District Where Filed | Number Of Plaintiffs | Running Total Of Plaintiffs In All Cases | Plaintiffs' Counsel | Claims Brought[1,2] |
|---|---|---|---|---|---|---|---|
| 18 | *Iston Holdings Ltd., et al. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-cv-0901 | 12/10/2010 | S.D. Fla. | 2 | 25 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 19 | *New Horizon Dev., Inc., et al. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-0898 | 12/10/2010 | S.D. Fla. | 2 | 27 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 20 | *Perez v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-0903 | 12/10/2010 | S.D. Fla. | 1 | 28 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 21 | *Rendiles v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-0902 | 12/10/2010 | S.D. Fla. | 1 | 29 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 22 | *Ruiz v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-0900 | 12/10/2010 | S.D. Fla. | 1 | 30 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 23 | *Salcar Ltd. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-0899 | 12/10/2010 | S.D. Fla. | 1 | 31 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 24 | *Triple R Holdings Ltd., et al., v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-0897 | 12/10/2010 | S.D. Fla. | 2 | 33 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |

| Order Of Case | Name Of Case | Date Filed | District Where Filed | Number Of Plaintiffs | Running Total Of Plaintiffs In All Cases | Plaintiffs' Counsel | Claims Brought[1,2] |
|---|---|---|---|---|---|---|---|
| 25 | *Velvor, S.A., et al. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-0906 | 12/10/2010 | S.D. Fla. | 2 | 35 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 26 | *5C Invs. Ltd. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-0907 | 12/10/2010 | S.D. Fla. | 1 | 36 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 27 | *Bahia Del Rio, S.A. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-5716 | 7/12/2011 (amended)<br>6/16/2011 (original) | S.D. Fla. | 1 | 37 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 28 | *Archangel Res. Ltd., et al. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-5717 | 6/16/2011 | S.D. Fla. | 2 | 39 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 29 | *Blount Int'l v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-5719 | 7/12/2011 (amended)<br>6/16/2011 (original) | S.D. Fla. | 1 | 40 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 30 | *Diaz de Camara v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-5720 | 6/17/2011 | S.D. Fla. | 1 | 41 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 31 | *Dougherty v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-5721 | 7/29/2011 (amended)<br>6/17/2011 (original) | S.D. Fla. | 1 | 42 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |

| Order Of Case | Name Of Case | Date Filed | District Where Filed | Number Of Plaintiffs | Running Total Of Plaintiffs In All Cases | Plaintiffs' Counsel | Claims Brought[1,2], |
|---|---|---|---|---|---|---|---|
| 32 | *De Passos Vieira Lima v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-5722 | 6/17/2011 | S.D. Fla. | 1 | 43 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment andConstructive Trust* |
| 33 | *Echeverri de Mata v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-5723 | 6/17/2011 | S.D. Fla. | 1 | 44 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 34 | *Dougherty Novella v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-5724 | 8/1/2011 (amended)<br>6/17/2011 (original) | S.D. Fla. | 1 | 45 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 35 | *Richmon Co. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-5725 | 6/17/2011 | S.D. Fla. | 1 | 46 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 36 | *Sabillon v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-5726 | 6/17/2011 | S.D. Fla. | 1 | 47 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 37 | *San Blas S.A., et al. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-5727 | 7/12/2011 (amended)<br>6/17/2011 (original) | S.D. Fla. | 2 | 49 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 38 | *Smerant Corp. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-5728 | 6/17/2011 | S.D. Fla. | 1 | 50 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |

| Order Of Case | Name Of Case | Date Filed | District Where Filed | Number Of Plaintiffs | Running Total Of Plaintiffs In All Cases | Plaintiffs' Counsel | Claims Brought[1,2] |
|---|---|---|---|---|---|---|---|
| 39 | *Mantecon v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-5729 | 7/12/2011 | S.D. Fla. | 1 | 51 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 40 | *Pharmafoods Int'l. C.V., et al., v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-5730 | 7/12/2011 | S.D. Fla. | 2 | 53 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 41 | *Tierra, C.V. et al. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-5731 | 7/12/2011 | S.D. Fla. | 6 | 59 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 42 | *Mizrahi v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-6788 | 8/26/2011 | S.D. Fla. | 1 | 60 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 43 | *Quiroz Stone v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-7651 | 8/5/2011 | S.D. Fla. | 1 | 61 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 44 | *Nautical Village, Inc. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-7652 | 8/5/2011 | S.D. Fla. | 1 | 62 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 45 | *Positano Invs. Ltd. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-8371 | 9/23/2011 | S.D. Fla. | 1 | 63 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |

| Order Of Case | Name Of Case | Date Filed | District Where Filed | Number Of Plaintiffs | Running Total Of Plaintiffs In All Cases | Plaintiffs' Counsel | Claims Brought[1,2] |
|---|---|---|---|---|---|---|---|
| 46 | *Maplehurst Holdings Ltd. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 11-CV-8372 | 10/14/2011 | S.D. Fla. | 1 | 64 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 47 | *Sand Overseas Ltd. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 12-CV-0148 | 11/18/2011 | S.D. Fla. | 1 | 65 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 48 | *Rebac Enters. Ltd. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 12-CV-03969 | 12/29/2011 | S.D. Fla. | 1 | 66 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 49 | *Brea Int'l. Ltd. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 12-CV-3970 | 12/20/2011 | S.D. Fla. | 1 | 67 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• *Unjust Enrichment and Constructive Trust* |
| 50 | *Diaz v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 12-CV-9146 | 11/19/2012 | S.D. Fla. | 1 | 68 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence |
| 51 | *Rosental v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 12-CV-9421 | 11/19/2012 | S.D. Fla. | 1 | 69 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence |
| 52 | *Lyac Venture Corp. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 12-CV-9422 | 11/19/2012 | S.D. Fla. | 1 | 70 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence |
| 53 | *Boltvinik de Uziel v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 12-CV-9423 | 11/19/2012 | S.D. Fla. | 1 | 71 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence |

| Order Of Case | Name Of Case | Date Filed | District Where Filed | Number Of Plaintiffs | Running Total Of Plaintiffs In All Cases | Plaintiffs' Counsel | Claims Brought[1,2] |
|---|---|---|---|---|---|---|---|
| 54 | *TRE-C, S.A. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 12-CV-9425 | 11/19/2012 | S.D. Fla. | 1 | 72 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence |
| 55 | *Skyworth Prods. Ltd. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 12-CV-9427 | 12/7/2012 | S.D. Fla. | 1 | 73 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence |
| 56 | *Optic Blue Ltd. v. Standard Chartered Bank (Americas) Ltd.*, No. 12-CV-9426 | 12/6/2012 | S.D. Fla. | 1 | 74 | Carlson & Lewittes, P.A. | • Fraud<br>• Breach of Fiduciary Duty |

## DISMISSED OR STAYED CASES AGAINST STANDARD CHARTERED

| Name of Case | Date Filed | District where Filed | Number of Plaintiffs | Plaintiffs' Counsel | Claims brought |
|---|---|---|---|---|---|
| *Bhatia, et al. v. Standard Chartered Bank Int'l (USA) Ltd.*, No. 09-CV-2410[8] | 3/16/2009 | S.D.N.Y. | 5 | Crowell & Moring LLP | • Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5 promulgated thereunder<br>• Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a)<br>• Rescission under the Investment Advisors Act, 15 U.S.C. § 80b-1 et seq.<br>• Breach of Fiduciary Duty<br>• Gross Negligence<br>• Unjust Enrichment and Constructive Trust<br>• Fraud<br>• Specific Performance<br>• Conversion |
| *Pujals v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 10-CV-02878[9] | 8/13/2009 (amended)<br><br>6/12/2009 (original) | S.D. Fla. | Purported Class Action | Dimond Kaplan & Rothstein, P.A. | • Breach of contract<br>• *Unjust Enrichment* |
| *Tradewaves Ltd. et al. v. Standard Chartered Bank Int'l (USA) Ltd.*, No. 09-CV-9423[10] | 11/12/2009 | S.D.N.Y. | 17 | Crowell & Moring LLP | • Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5 promulgated thereunder<br>• Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a)<br>• Rescission under the Investment Advisors Act, 15 U.S.C. § 80b-1 et seq.<br>• Breach of Fiduciary Duty<br>• Gross Negligence<br>• Unjust Enrichment and Constructive Trust<br>• Fraud<br>• Specific Performance |
| *Lou-Martinez v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 10-CV-8272[11] | 10/19/2010 (amended)<br><br>9/27/2010 (original) | S.D. Fla. | 2 | Curran & Associates | • Conversion<br>• Breach of Fiduciary Duty<br>• Breach of Duty of Care<br>• Fraud<br>• Gross Negligence<br>• Unjust Enrichment and Constructive Trust |
| *Caso, et al. v. Standard Chartered Bank Int'l. (Americas) Ltd.*, No. 10-CV-09196[12] | 12/9/2010 | S.D.N.Y. | Purported Class Action | Kachroo Legal Services, P.C. | • Breach of Fiduciary Duty<br>• Negligence |
| *Prionas Shipping Company v. Standard Chartered International (USA) Ltd., et al.* - 10-CV-24429[11] | 12/10/10 | S.D. Fla. | 1 | Curran & Associates | • ] Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• Unjust Enrichment and Constructive Trust<br>• Conversion |
| *Leonardos v. Standard Chartered International (USA) Ltd., et al. - 10-CV-2443*[11] | 12/10/10 | S.D. Fla. | 1 | Curran & Associates | • Breach of Fiduciary Duty<br>• Negligence<br>• Negligent Misrepresentation<br>• Fraud<br>• Gross Negligence<br>• Unjust Enrichment andConstructive Trust<br>• Conversion |

[8] This case was dismissed in its entirety with leave to re-file in Singapore. DE 521.
[9] This case was dismissed in its entirety. DE 763.
[10] This case was dismissed in its entirety with leave to re-file in Singapore. DE 521.
[11] These cases were dismissed in their entirety. DE 744.
[12] This case has been stayed pending arbitration. DE 882.

**EXHIBIT 2 TO LETTER TO**
**HONORABLE VICTOR MARRERO**
**FROM STANDARD CHARTERED PLAINTIFFS**
**09-cv-118**
**November 17, 2014**

November 17, 2014

***By fax to (212 )805-6382***

Honorable Victor Marrero
United States District Judge
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007-1312

**Re:** ***Anwar, et al. v. Fairfield Greenwich Limited, et al., 09-cv-118(VM)(THK)***

Dear Judge Marrero:

We write as counsel for Headway Investment Corp. ("Headway"). This letter is sent to supplement today's letter from Richard E. Brodsky, Liaison Counsel for the Standard Chartered Plaintiffs. We write this letter with the full intent of preserving intact the confidentiality of communications protected by the attorney-client privilege and of attorney work-product.

Counsel for Standard Chartered, in her October 31, 2014 letter to the Court, made the following statements:

> Finally, plaintiffs' claims here are based on alleged wrongdoing originally pled as federal securities fraud claims. Knowing that their allegations fail to meet the requirements of the PSLRA, plaintiffs have tried to avoid dismissal by filing complaints asserting only state law claims. This is precisely what SLUSA says you cannot do—it is SLUSA's purpose 'to negate the artful pleading by which certain plaintiffs evaded the dictates of the PSLRA.'

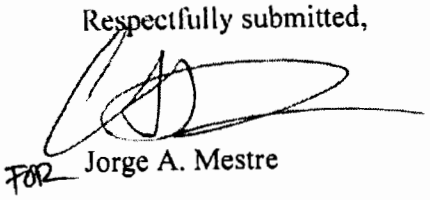
October 31, 2014 Letter, 8-9. The letter further stated that:

> Indeed, SLUSA's remedial purpose would be undermined completely if plaintiffs could evade it simply by engaging separate counsel and claiming lack of intent to 'join.'

*Id* at 11-12.

We wish to reaffirm that, as Mr. Brodsky's letter states, undersigned counsel did not coordinate with any lawyer for any other SC Plaintiff in filing suit for Headway.

Respectfully submitted,



FOR Jorge A. Mestre

**CURRAN LAW, PL**
Attorneys at Law
701 Brickell Avenue - Suite 1550
Miami, Florida 33131

—

Laurence E. Curran III

Telephone 305-777-0374
Telefax 305-728-5288
Email lecurran@lecurran.com

November 17, 2014

Honorable Victor Marrero, United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: *Anwar, et al. v. Fairfield Greenwich Ltd, et al.*, No. 09-CV-118 (S.D.N.Y.) - Standard Chartered Cases

Dear Judge Marrero:

I write as counsel for the individual parties known as the Standard Chartered Plaintiffs. This letter is sent to supplement the letter of even date from Richard E. Brodsky, Liaison Counsel for the Standard Chartered Plaintiffs. I write this letter with the full intent of preserving intact the confidentiality of communications protected by the attorney-client privilege and of attorney work-product.

Counsel for Standard Chartered, in her October 31, 2014 letter to the Court, made the following statements:

> Finally, plaintiffs' claims here are based on alleged wrongdoing originally pled as federal securities fraud claims. Knowing that their allegations fail to meet the requirements of the PSLRA, plaintiffs have tried to avoid dismissal by filing complaints asserting only state law claims. This is precisely what SLUSA says you cannot do—it is SLUSA's purpose 'to negate the artful pleading by which certain plaintiffs evaded the dictates of the PSLRA.' (Letter, 8-9)
>
> Indeed, SLUSA's remedial purpose would be undermined completely if plaintiffs could evade it simply by engaging separate counsel and claiming lack of intent to 'join.' (Letter, 11-12)

I wish to reaffirm to this Court, as Mr. Brodsky's letter states, that the undersigned counsel did not coordinate with any lawyer for any other SC Plaintiff in bringing the cases brought by the undersigned.

On August 19, 2009, I originally independently brought an action on behalf of Ricardo Lopez, an individual investor in Fairfield Sentry Ltd., when a complaint was filed with the United States District Court for the Southern District of Florida against various Standard Chartered defendants. I did not file any other complaints against the Standard Chartered defendants until after the Court's Decision and Order on SLUSA and related issues in the Anwar case on August 18, 2010 (Document 509) and following the Court's Decision and Order issued on October 4, 2010 denying the Motion to Dismiss the four initial complaints (Headway, Maridom, Lopez and Valladolid) filed by the Standard Chartered Defendants (Document 543).

Thereafter various investors in Fairfield Sentry Ltd. and/or Fairfield Sigma Ltd. approached me with factual allegations similar in nature to those alleged by my client Ricardo Lopez. Accordingly, in December 2010, I filed 14 complaints in the Southern District of Florida on behalf of 18 Fairfield Funds investors. Following those filings in December 2010, I filed additional complaints in a random fashion over the following two years for various investors in the Fairfield Funds so that, as I informed the Court in my letter submission of October 21, 2014 (Document 1331), I am now counsel for plaintiffs in 42 Standard Chartered actions where 48 plaintiffs have an economic interest in this case.

There was never any coordination among my individual clients (except those joined in a single lawsuit). Individual decisions were made to bring separate lawsuits predominantly alleging breach of fiduciary duty and negligence. I also did not realize that there would be over 50 plaintiffs in the consolidated Standard Chartered actions until years after filing a complaint in the Southern District of Florida on behalf of my initial client Ricardo Lopez on August 19, 2009.

While I do not believe that my client's cases should be aggregated with the other Standard Chartered cases for all of the reasons set forth in Mr. Brodsky's letter to the Court on behalf of the Standard Chartered Plaintiffs, I also submit again to the Court as I did in my letter of October 21, 2014 that SLUSA is not applicable to my clients' cases as I represent only 48 plaintiffs with an economic interest in the outcome of this case. In my letter to the Court of October 21, 2014, I requested a pre-motion conference regarding the contemplated motions of seven plaintiffs for permission of the Court to either have them dropped as plaintiffs or to have their cases dismissed. In that letter, I advise the Court that as a matter of fact, 5 of the plaintiffs that I represent should in retrospect not have been named as plaintiffs because they were gifted shares of Fairfield Sentry by co-plaintiffs and did not actually invest in Fairfield Sentry because they did not purchase any shares of Fairfield Sentry and never made any direct investments themselves in Fairfield Sentry and thus have no financial stake in the case.

In regard to another case, *Juan D. Quiroz Stone v. Standard Chartered Bank International (Americas) Limited*, No. 11-cv-22835, as I pointed out to the Court in my letter of October 21, 2014, it has became apparent based on holding letters issued by Standard Chartered regarding the account of Ponciana Holdings Ltd. ("Ponciana") well

described in the complaint in the *Quiroz Stone* case was likely made through Ponciana, a company that is not named as a plaintiff, and not by Mr. Quiroz personally. Although Mr. Quiroz, who is in his eighties and has not been in the best health, had originally believed that the investments in Fairfield Sentry were made through his personal account at SCB, it has been clarified that the investment he thought he made was actually made by Ponciana. Accordingly, Mr. Quiroz wishes to have his complaint dismissed as he was not an investor in Fairfield Sentry.

Hence, even if the Court considers SLUSA relevant at this stage of the proceedings regarding these cases, this Court has found that the possibility of a SLUSA argument by a defendant should not preclude the dismissal from the action of plaintiffs with "no actual interest in the litigation." See *Lee v. Marsh & McLennan Companies, Inc.*, et al., 2007 WL 704033 (SDNY 2007). Accordingly, I again submit that for the purposes of the Standard Chartered defendants' SLUSA argument, it should be considered that I represent only 48 plaintiffs with an economic interest and that the 6 plaintiffs with no economic interest should be dropped or dismissed as plaintiffs as per my request set forth in my letter to the Court of October 21.

Thank you for consideration of this letter.

Respectfully submitted,

Laurence E. Curran III

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November 17, 2014

Honorable Victor Marrero
United States District Judge
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: *Anwar, et al. v. Fairfield Greenwich Limited, et al.*,
Case No. 09-cv-118 (VM)(THK), Standard Chartered Cases

This correspondence relates to: *Barbachano v. Standard Chartered Bank International (Americas) Limited, et al.*, 1:11-cv-03553-VM

Dear Judge Marrero:

We write on behalf of Plaintiff, Teresa Barbachano, one of the Plaintiffs in the Standard Chartered Cases ("SC Cases"), and, in particular, to supplement the correspondence, also dated today, from Richard E. Brodsky, Liaison Counsel for the Standard Chartered Plaintiffs. We write this letter in response to speculative and incorrect statements made in Standard Chartered's October 31, 2014 correspondence to the Court and with the full intent of preserving intact the confidentiality of communications protected by the attorney-client privilege and of attorney work-product.

Specifically, in her October 31, 2014 letter to the Court, counsel for Standard Chartered makes the following statements:

> Finally, plaintiffs' claims here are based on alleged wrongdoing originally pled as federal securities fraud claims. Knowing that their allegations fail to meet the requirements of the PSLRA, plaintiffs have tried to avoid dismissal by filing complaints asserting only state law claims. This is precisely what SLUSA says you cannot do—it is SLUSA's purpose 'to negate the artful pleading by which certain plaintiffs evaded the dictates of the PSLRA.' (Letter, 8-9)
>
> Indeed, SLUSA's remedial purpose would be undermined completely if plaintiffs could evade it simply by engaging separate counsel and claiming lack of intent to 'join.' (Letter, 11-12)

Standard Chartered is mistaken. Neither in Ms. Barbachano's original complaint nor in her amended complaint did undersigned counsel seek to avoid or evade the pleading requirements of the PSLRA. To the contrary, the complaints filed on behalf of

Ms. Barbachano contained detailed allegations and it has been, and continues to be, undersigned counsel's belief that all counts of those complaints state claims for relief. Indeed, Ms. Barbachano's complaints were based not only on the lack of Standard Chartered's due diligence with regard to the investment in Fairfield Sentry, but also on, among other things, the lack of the overall suitability of the investments in her entire portfolio – allegations that we believe, and continue to believe, are especially well-suited for state law claims for breach of fiduciary duty and negligence.

In addition, undersigned counsel did not coordinate with counsel for any other SC Plaintiff in bringing Ms. Barbachano's case and counsel brought that case with no knowledge, or the ability to know or believe, that, eventually, there would be more than fifty individual SC Plaintiffs.

Finally, undersigned counsel objected to the inclusion of Ms. Barbachano's case in this multidistrict litigation and has requested remand of her case on several occasions. Simply put, as set forth in undersigned counsel's prior correspondence to the Court, dated November 19, 2013 [DE 1224]:

> [H]aving engineered the transfer of this case, Defendants now seek to profit by it, claiming that Ms. Barbachano's case should be considered part of a "covered class action" because her case is part of this multidistrict litigation. *See* Defendants' November 12, 2013 Letter, at 1 n.1. However, if Defendants had made that claim to the multidistrict panel when it sought transfer, the panel would surely have denied the request, especially given the panel's acknowledgment that this Court could revisit the transfer order whenever it saw fit. The panel, we respectfully submit, did not order the transfer of Ms. Barbachano's action only to see her case dismissed because of that decision. *Cf.* 28 U.S.C. § 1407(a) ("[T]ransfers shall be made by the judicial panel on multidistrict litigation authorized by this section upon its determination that transfers for such proceedings ***will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.***") (emphasis supplied).

Thank you for consideration of this letter.

Respectfully submitted,

Katz Barron Squitero Faust

H. Eugene Lindsey

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November 17, 2014

Honorable Victor Marrero
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**RE:** ***Ricardo Almiron v. Standard Chartered Bank Int'l (Americas) Ltd*, Case No.: 10-CV-06186**
***Carlos Carrillo v. Standard Chartered Bank Int'l (Americas) Ltd*, Case No.: 10-CV-06187**

Dear Judge Marrero:

We write as counsel for the Ricardo Almiron and Carlos Carrillo. This letter is sent to supplement the letter from Richard E. Brodsky, Liaison Counsel for the Standard Chartered Plaintiffs. We write this letter with the full intent of preserving intact the confidentiality of communications protected by the attorney-client privilege and of attorney work-product.

Counsel for Standard Chartered, in her October 31, 2014 letter to the Court, made the following statements:

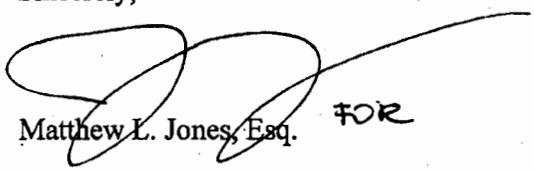
> Finally, plaintiffs' claims here are based on alleged wrongdoing originally pled as federal securities fraud claims. Knowing that their allegations fail to meet the requirements of the PSLRA, plaintiffs have tried to avoid dismissal by filing complaints asserting only state law claims. This is precisely what SLUSA says you cannot do—it is SLUSA's purpose 'to negate the artful pleading by which certain plaintiffs evaded the dictates of the PSLRA.' (Letter, 8-9)

Indeed, SLUSA's remedial purpose would be undermined completely if plaintiffs could evade it simply by engaging separate counsel and claiming lack of intent to 'join.' (Letter, 11-12)

We wish to reaffirm to this Court the following. As Mr. Brodsky's letter states, the undersigned counsel did not coordinate with the lawyer for any other SC Plaintiff in bringing the cases brought by the undersigned. Furthermore, despite the fact that our firm has filed two lawsuits against the Standard Chartered defendants, there was no coordination among the individual clients to file their claims. Individual decisions were made by Messrs. Almiron and Carrillo to bring separate lawsuits. In addition, Messrs. Almiron and Carrillo's state law claims were filed well before this Court's October 2010 decision regarding the Private Securities Litigation Reform Act of 1995 ("PLSRA") and, in fact, were initially filed in the Eleventh Circuit Court in and for Miami-Dade County, Florida without any knowledge that over fifty plaintiffs had been consolidated in the Standard Chartered action in the District Court for the Southern District of New York. For the foregoing reasons, the Court should not dismiss Messrs. Almiron and Carrillo's claims pursuant to the SLUSA and the position of the Standard Chartered Defendants must be rejected.

Thank you for consideration of this letter.

Sincerely,



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November 17, 2014

**VIA FACSIMILE**
Honorable Victor Marrero
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500 Pearl Street
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***Re: Anwar, et al. v. Fairfield Greenwich Limited, et al. - Standard Chartered Cases***
**(Gerico Investments, Inc., et al v. Standard Chartered Bank International (Americas) Limited; Blockbend Ltd. v. Standard Chartered Bank International (Americas) Limited; Baymall Investments Ltd. v. Standard Chartered Bank International (Americas) Limited; Eastfork Assets Ltd. v. Standard Chartered Bank International (Americas) Limited; Eduardo Child Escobar, et al. v. Standard Chartered Bank International (Americas) Limited; Mailand Investments Inc. v. Standard Chartered Bank International (Americas) Limited)**

Dear Judge Marrero:

The undersigned firm is counsel for the Plaintiffs in each of the above-referenced matters. This letter is sent to supplement the letter of even date from Richard E. Brodsky, Liaison Counsel for the Standard Chartered Plaintiffs.

Counsel for Standard Chartered, in her October 31, 2014 letter to the Court, made the following statements:

> Finally, plaintiffs' claims here are based on alleged wrongdoing originally pled as federal securities fraud claims. Knowing that their allegations fail to meet the requirements of the PSLRA, plaintiffs have tried to avoid dismissal by filing complaints asserting only state law claims. This is precisely what SLUSA says you cannot do—it is SLUSA's purpose 'to negate the artful pleading by which certain plaintiffs evaded the dictates of the PSLRA.' (Letter, 8-9)
>
> Indeed, SLUSA's remedial purpose would be undermined completely if plaintiffs could evade it simply by engaging separate counsel and claiming lack of intent to 'join.' (Letter, 11-12)

As Mr. Brodsky's letter states, my firm did not coordinate with the lawyer for any other SC Plaintiff in connection with the filing of any of the above-referenced matters. Without waiving confidentiality of communications protected by the attorney-client privilege and of attorney work-product, the undersigned states that the decision to file these actions, and to assert the breach of fiduciary duty and negligence claims set forth therein, were decisions made solely by my firm in consultation with our clients.

Thank you for consideration of this letter.

Very truly yours,

**MARKO & MAGOLNICK, PA**

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November 17, 2014

***By fax to (212) 805-6382***

Honorable Victor Marrero
United States District Judge
Daniel Patrick Moynihan U.S. Courthouse
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**Re:** *Anwar, et al. v. Fairfield Greenwich Limited, et al.*, 09-cv-118(VM)(THK)
*Maria Akriby Valladolid v. American Express Bank, et al.*, C.D. California, C.A. No. 2:09-6937 (conditionally transferred by MDL 2088)

Dear Judge Marrero:

Dear Judge Marrero:

We write as counsel for Maria Akriby Valladolid . This letter is sent to supplement the letter of even date from Richard E. Brodsky, Liaison Counsel for the Standard Chartered Plaintiffs. We write this letter with the full intent of preserving intact the confidentiality of communications protected by the attorney-client privilege and of attorney work-product.

Counsel for Standard Chartered, in her October 31, 2014 letter to the Court, made the following statements:

> Finally, plaintiffs' claims here are based on alleged wrongdoing originally pled as federal securities fraud claims. Knowing that their allegations fail to meet the requirements of the PSLRA, plaintiffs have tried to avoid dismissal by filing complaints asserting only state law claims. This is precisely what SLUSA says you cannot do—it is SLUSA's purpose 'to negate the artful pleading by which certain plaintiffs evaded the dictates of the PSLRA.' (Letter, 8-9)
>
> Indeed, SLUSA's remedial purpose would be undermined completely if plaintiffs could evade it simply by engaging separate counsel and claiming lack of intent to 'join.' (Letter, 11-12)

We wish to reaffirm to this Court the following. As Mr. Brodsky's letter states, the undersigned counsel did not coordinate with the lawyer for any other SC Plaintiff in bringing the

cases brought by the undersigned. We made an individual decision to bring a lawsuit for our client predominantly alleging breach of fiduciary duty and negligence.

Indeed, Plaintiff was an American Express customer who was induced by American Express' reputation as a highly reputable and trustworthy company to transfer approximately $1 million to and for investment by American Express affiliates, Defendants American Express Bank Ltd and American Express Bank International. On September 18, 2007, Defendant Standard Chartered PLC entered into an agreement to purchase AEB from the American Express Company. This acquisition was completed in February 2008.

Prior to Standard Chartered PLC's acquisition, AEB serviced plaintiff's accounts from its offices at 501 West Broadway, Suite 1360, **San Diego,** California, 92101. Plaintiff's accounts were opened and serviced in San Diego, California.

Plaintiff filed in California district court, and was only transferred upon an order of the JPML. Plaintiff did not know of other plaintiffs at the time of her filing.

Thank you for consideration of this letter.

Sincerely yours,

Aguirre & Severson LLP

Maria C. Severson, Esq.

cc: SC Plaintiffs' Counsel
SC Defendants' Counsel