

# Exhibit 2

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ANWAR, *et al.*,

Plaintiffs,

v.

FAIRFIELD GREENWICH LIMITED, *et al.*,

Defendants.

This Document Relates To: All Actions

Master File No. 09-cv-118 (VM)

**PLAINTIFFS' RESPONSES AND OBJECTIONS TO  
CITCO GLOBAL CUSTODY N.V.'S  
CONTENTION INTERROGATORIES TO PLAINTIFFS**

Pursuant to Federal Rules of Civil Procedure 26 and 33, and Rule 33.3 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York as modified by the Amended Case Management Plan and Scheduling Order, entered November 2, 2010, the Class Representative Plaintiffs ("Plaintiffs"), by and through their undersigned counsel, hereby respond to Citco Global Custody N.V.'s ("Citco") Contention Interrogatories to Plaintiffs.

**PRELIMINARY STATEMENT**

The responses below reflect the current state of Plaintiffs' knowledge, understanding and belief based upon their investigation and discovery to date. Plaintiffs' discovery, investigation and preparation for trial is ongoing as of the date of these responses and Plaintiffs reserve the right: (a) to make subsequent revisions, clarifications or amendments to their responses and objections based upon information, evidence, documents, facts and/or other things that may be discovered, the relevance of which may hereafter be discovered; and (b) to produce, introduce or

rely upon additional or subsequently acquired or discovered evidence and information in any proceedings or at any trial held in this litigation. Furthermore, the Citco Defendants have not fully responded to Plaintiffs' Interrogatories and Requests for Production; nor has Citco provided discovery pursuant to Judge Maas' Discovery Order dated July 8, 2013, and Plaintiffs reserve the right to use any further discovery materials produced by Citco. Plaintiffs further reserve the right to object on any ground and at any time to a demand for further answers to the Interrogatories. In addition to the documents and testimony set forth in Plaintiffs' Responses below, examples of principal or material facts and evidence supporting Plaintiffs' contentions are contained in the forthcoming reports of Plaintiffs' expert witnesses, including the documents and testimony upon which they rely.

Further, any response by Plaintiffs to a particular interrogatory, or any part thereof, is not intended, and shall not be construed, as an admission of any fact, assertion, or other matter expressed or implied by the interrogatory, including, without limitation, the existence of any information described or assumed.

### **GENERAL OBJECTIONS**

1. The following general objections ("General Objections") are incorporated in Plaintiffs' responses to each and every request contained in the Interrogatories. No response to any interrogatory is, or shall be deemed to be, a waiver of Plaintiffs' General Objections, and Plaintiffs make such responses without committing to treat future interrogatories in a similar manner.

2. To the extent that an Interrogatory seeks "each," "every," or "all" facts, pieces of evidence, witnesses, or application of law to fact, Plaintiffs object to the Interrogatory on the grounds that it is overbroad and unduly burdensome. *See Ritchie Risk-Linked Strategies Trading*

*(Ireland), Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010) (Marrero, J.)

(“Defendants’ requests, insofar as they seek every fact, every piece of evidence, every witness, and every application of law to fact—rather than, for example, certain principal or material facts, pieces of evidence, witnesses and legal applications—supporting the identified allegations, are overly broad and unduly burdensome.”); *Linde v. Arab Bank, PLC*, 2012 WL 957970 (E.D.N.Y. 2012) (“Courts generally resist efforts to use contention interrogatories as a vehicle to obtain every fact and piece of evidence a party may wish to offer concerning a given issue at trial. Thus courts do not typically compel responses to interrogatories that seek a catalog of all facts or all evidence that support a party's contentions.”).

3. Plaintiffs object to the Interrogatories to the extent they purport to seek discovery from individual class members or named plaintiffs who are not subject to discovery, pursuant to prior orders of the Court.

4. Plaintiffs object to the Interrogatories to the extent the information sought is protected from discovery by the attorney-client privilege, the work product doctrine, or other applicable privileges or doctrines. Plaintiffs hereby claim such privileges and protections to the extent implicated by each interrogatory, and exclude privileged and protected information from their responses to the Interrogatories. Any disclosure of such protected or privileged information is inadvertent, and is not intended to waive those privileges or protections.

5. Plaintiffs object to the Interrogatories to the extent that the “Instructions” incorporated therein attempt to impose obligations on Plaintiffs beyond those imposed or authorized by the Federal Rules of Civil Procedure, the Local Civil Rules of the Southern District of New York, the Orders of the Court, or other applicable law.

6. Plaintiffs object to the Interrogatories to the extent that they seek information that is unavailable to Plaintiffs or outside of their possession, custody or control, or seek information in the possession, custody or control of third parties.

7. Plaintiffs object to the Interrogatories to the extent that they seek disclosure of information that is already in the possession, custody or control of Defendants, or seek information that could as readily, conveniently and in a less burdensome fashion be obtained from others or by other means, including deposition discovery or reviewing the documents produced in response to Defendants' Joint First Request for Production of Documents.

8. Plaintiffs object to the Interrogatories to the extent they are overbroad, duplicative, and to the extent they seek information or materials that are irrelevant or immaterial to the issues in this action and/or are not reasonably calculated to lead to the discovery of admissible evidence. In addition, Plaintiffs object to the Interrogatories to the extent that responding to the Interrogatories would be unduly burdensome and would cause undue time and expense to Plaintiffs that is not commensurate with Defendants' legitimate discovery needs.

9. Plaintiffs object to the Interrogatories insofar as they seek to impose upon Plaintiffs an obligation to provide information that Plaintiffs are not able to ascertain after reasonably diligent investigation.

10. Plaintiffs object to the Interrogatories to the extent they are vague, ambiguous or would require Plaintiffs to speculate regarding the information sought.

11. Plaintiffs' responses to the Interrogatories are made without waiving any objections as to relevancy, admissibility, competency, materiality, or privilege.

### **OBJECTIONS TO DEFINITIONS**

1. Plaintiffs object to Definition No. 2 as overbroad and unduly burdensome to the extent it purports to require the disclosure of information from individuals or entities who are not required to furnish such information under the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Southern District of New York, the Orders of the Court, or other applicable law.

### **OBJECTIONS TO INSTRUCTIONS**

1. Plaintiffs object to Instruction No. 7 as unduly burdensome, and to the extent that it seeks to impose obligations on Plaintiffs beyond those imposed or authorized by the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Southern District of New York, the Orders of the Court, or other applicable law.

### **SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES**

1. Identify every “red flag” that You contend existed relating to Bernard L. Madoff or BLMIS prior to Bernard L. Madoffs arrest on December 11, 2008.

**RESPONSE:** Without waiving the General Objections, Plaintiffs respond as follows: Plaintiffs contend that there were substantial issues concerning BLMIS/Madoff and the Funds about which Citco had actual knowledge and concerns.<sup>1</sup> Examples of the serious issues concerning BLMIS/Madoff and the Funds, which Plaintiffs contend Citco was aware of are set forth in Appendix A, with examples of the principal or material facts and evidence.

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<sup>1</sup> Plaintiffs contend that the Citco Defendants’ operation was composed of interrelated entities that shared names, information, management, and goals related to the Funds’ investors. Examples of principal or material facts and evidence cited in Plaintiffs’ Responses show that all Citco entities were aware of the serious issues and concerns raised internally within Citco, and were complicit in Citco’s fraud, breaches of duty, and other wrongdoing. *See, e.g.,* [REDACTED]

2. For each red flag identified in response to Interrogatory No.1, state: (i) the source of such red flag; (ii) whether You contend that CGC was aware of such red flag and, if so, the basis of Your contention; (iii) the person(s), if any, at CGC You contend were aware of such red flag; (iv) the date on which such person became aware of such red flag; (v) whether You were aware of such red flag; (vi) the date on which You became aware of such red flag, if applicable; and (vii) how You became aware of such red flag.

**RESPONSE:** Without waiving the General Objections, Plaintiffs incorporate their response to Interrogatory No.1, and further respond as follows:

(i) Plaintiffs are unable to answer this subpart because the term “source of such red flag” is vague and ambiguous.

(ii)-(iv): *See* Appendix A. Plaintiffs contend that Citco had actual knowledge of the issues identified in Appendix A from at least the inception of Citco’s relationship with the Funds, except for parts D, E, F, K of Appendix A, which Citco learned during the course of the relationship, as evidenced in referenced documents. Moreover, Plaintiffs contend that by at least 2000, Citco expressly recognized the inherent and serious risks to Plaintiffs as identified in Appendix A. Documents and testimony set forth in Appendix A provide examples of individuals at Citco who had knowledge of such issues and dates on which they had such knowledge.

(v)-(vii): Plaintiffs object to subparts (v) through (vii) as outside of the scope of a contention interrogatory in that they do not seek information regarding any contention by Plaintiffs, and they are overbroad and unduly burdensome. Without waiving the foregoing objections and the General Objections, Plaintiffs state that they were not aware of the serious concerns about the Funds that were identified by and known to Citco, or of Citco’s failed and substandard efforts to address those concerns. *See* Appendix A.





█ These duties included, among other things, independently calculating the NAV, reconciling cash and other balances, independently reconciling the Funds' portfolio holdings, preparing monthly financial statements, and preparing records for the external audit. *See, e.g.,*

█ Appendix B. Citco's duties further included holding any securities purchased for the Funds, or ensuring that the securities were in the custody of the sub-custodian; maintaining an ongoing, appropriate level of supervision of sub-custodians, including Madoff; and maintaining records of the securities held for the Funds. *See, e.g., id.* Citco also served as the Funds' agent with investors, and was specifically responsible for communications with them. *See, e.g.,* Appendix B.

As known and intended by Citco, the Plaintiffs reposed their trust and confidence in Citco, which occupied a superior position, and had superior expertise or knowledge, to provide these financial services when Plaintiffs made their initial investment in the Funds, re-invested in the Funds, and retained those investments in the Funds. *See, e.g.,* █

█ Plaintiffs also relied on Citco as a fiduciary to disclose material information to them. Plaintiffs reposed their trust and confidence in Citco, which occupied a superior position and had superior expertise or knowledge, to provide financial services and disclosures, when Plaintiffs made their initial investment in the Funds, re-invested in the Funds, and retained investments in the Funds. *See, e.g., id.* Citco's false and misleading statements and omissions were fundamental to Plaintiffs' initial investment decisions, decisions to invest additional funds, and decisions to maintain the investments over time. *See, e.g., id.*

5. Identify every instance where (i) You contend CGC breached a fiduciary duty owed to You; (ii) the date of such breach; (iii) the person(s) at CGC who were aware of such breach; and (iv) all facts that You contend establish such breach.

**RESPONSE:** Without waiving the General Objections, Plaintiffs respond as follows:

Plaintiffs contend that Citco breached fiduciary duties to Plaintiffs, among other ways, by making false and misleading statements and omissions to Plaintiffs, including failing to disclose that Citco knew of and had serious concerns about the matters in Appendix A; that Citco was failing to take reasonable, industry-standard steps to fulfill its duties as administrator, custodian, bank, and depositary; and also for the reasons set forth below:

- Citco’s initial subscription confirmation and related correspondence, including the NAV calculation to determine the amount of shares being acquired: These statements were materially false and misleading because they falsely represented the value of the shares Plaintiffs would be receiving or received in return for their investments, and for the reasons identified above. *See, e.g.*, [REDACTED]

- Each time Citco sent Plaintiffs a NAV statement, or made an NAV statement available to Plaintiffs: These statements were materially false and misleading because they represented values of Plaintiffs’ investments that were false, and for the reasons identified above. *See, e.g.*, [REDACTED]

- The Funds’ Offering Memoranda and PPMs: Citco reviewed, revised, and approved the Funds’ offering memoranda and PPMs, which Citco knew contained false and misleading information about the Funds and Citco. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Citco was not independently reconciling the cash, other balances, or portfolio holdings of the fund. *See, e.g.,* Appendix A at ¶¶ A, E, G, K. [REDACTED]

[REDACTED]

[REDACTED] Yet Citco knew that it was acting as custodian “in name only,” and simply “mirroring Madoff’s statements,” without performing any oversight of the assets, including failing to verify the assets purportedly held by Madoff as sub-custodian, as it represented it would. *See, e.g.,* Appendix A at ¶¶ A, C, E. Citco recognized that the offering memoranda were misleading as to its role, and gave the false impression that it was independently verifying assets and reconciling trades (and not simply depending solely on information received from Madoff), when, in fact, it was not. *See, e.g.,* [REDACTED]

[REDACTED]. Citco knew that the role of Citco as custodian and Madoff’s discretion over the Funds’ accounts and assets were being misrepresented to the Irish Stock Exchange and Plaintiffs, yet Citco did nothing to correct these misstatements. *See, e.g.,* [REDACTED] Appendix A at ¶¶ A, B, D.

Citco further breached its fiduciary duty to Plaintiffs by failing to independently calculate the NAV; failing to independently reconcile the Funds' purported cash balances; failing to independently reconcile the Funds' portfolio holdings; failing to independently confirm the existence of the Funds' assets; failing to insist on an audit of BLMIS/Madoff by a qualified accounting firm; [REDACTED]; failing to correct material misstatements; failing to monitor BLMIS/Madoff in any meaningful way; [REDACTED] collaborating in misleading the Irish Stock Exchange concerning Madoff's role regarding the Funds; and [REDACTED]

[REDACTED] These breaches of duty occurred from the inception of Citco's providing services to the Funds and continued for the duration of the relationship. Examples of principal or material facts and evidence supporting these contentions are set forth in Plaintiffs' Responses to Interrogatory Nos. 1, 4 and Appendix A and B. *See* Plaintiffs' Responses to Interrogatory Nos. 1, 4 and Appendix A and B for examples of individuals at Citco who had knowledge and dates on which they had knowledge of the foregoing.

6. State whether You contend that CGC was aware, prior to December 11, 2008, that You were a beneficial holder to one of the Funds. If yes, state (i) the person(s) at CGC who had such awareness; (ii) when such person became aware; and (iii) how such person became aware.

**RESPONSE:** Without waiving the General Objections, Plaintiffs respond as follows: Plaintiffs contend that Citco was aware of the identities of the investors in the Funds prior to December 11, 2008. For example, Citco knew the identities of all investors in Fairfield Sentry and Fairfield Sigma when investors sent subscription money to Citco's accounts at HSBC and KBC; and Citco conducted know your customer procedures on all investors. Furthermore, Citco served as shareholder of record for over \$1 billion in Fund shares and Citco knew the identities of the beneficial holders. Examples of principal or material facts and evidence supporting these

contentions include: [REDACTED]

[REDACTED] Examples of the identities of individuals at Citco who had knowledge, and dates on which they had knowledge, are reflected in the documents and testimony set forth in support of this contention.

7. State whether You contend that You had any contact with CGC prior to December 11, 2008. If yes, identify (i) each contact You had with CGC; (ii) each person at CGC You had contact with; (iii) the date on which each contact was made; (iv) the document in which the contact is reflected, if any; and (v) the purpose of such contact.

**RESPONSE:** Without waiving the General Objections, Plaintiffs respond as follows: Plaintiffs contend that Plaintiffs had contact with Citco prior to December 11, 2008, including contact arising from activities such as those referenced in Plaintiffs' Response to Interrogatory No. 6.

8. State whether You contend Fairfield owed a fiduciary duty to You and, if so, the basis for the duty and all facts that You contend establish such duty.

**RESPONSE:** Plaintiffs object on the grounds that the Interrogatory is overbroad and unduly burdensome. Without waiving the foregoing objections and General Objections, Plaintiffs respond as follows: Plaintiffs contend that Fairfield owed fiduciary duties to Plaintiffs, which Fairfield breached. Fairfield represented that it had superior expertise or knowledge concerning the Funds, and was aware that potential and current investors were reposing trust and confidence in Fairfield in making their investment decisions. As examples, Fairfield held itself out as having special knowledge and expertise about Madoff's operations, including representing that Fairfield had full transparency to Madoff's accounts, which Fairfield claimed it was monitoring on a daily basis. Fairfield represented to Plaintiffs that their assets actually existed,

were being invested using a split-strike conversion strategy, and that assets in the Funds were earning substantial, consistent returns. *See, e.g.*, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. Identify every instance where (i) You contend Fairfield breached a fiduciary duty owed to You; (ii) the date of such breach; (iii) the person(s) at Fairfield who were aware of such breach; and (iv) all facts that You contend establish such breach.

**RESPONSE:** Plaintiffs object to this Interrogatory as outside of the scope of a contention interrogatory to the extent that it seeks information that is not relevant to any of the remaining claims in the action, and limit their answer to those breaches of fiduciary duties Plaintiffs contend that Citco aided and abetted. Plaintiffs further object on the grounds that the Interrogatory is overbroad and unduly burdensome. Without waiving the foregoing objections and General Objections, Plaintiffs respond as follows: Plaintiffs contend that Fairfield breached fiduciary duties to Plaintiffs, for example, because the representations it made to investors were false and misleading, including those statements set forth in the Funds' offering materials, and misrepresentations set forth in response to Interrogatory No. 10. Fairfield further breached its fiduciary duties to Plaintiffs by not performing obligations as it said it would, including monitoring and safeguarding the Plaintiffs' investments, and by failing to inform Plaintiffs that it was not performing such obligations. Examples of principal or material facts and evidence supporting Plaintiffs' contentions are set forth in Appendix C.

10. For every breach of fiduciary duty identified in response to Interrogatory No.9, state (i) whether You contend CGC was aware of such breach; (ii) the person(s) at CGC who You contend were aware of such breach; (iii) the date on which such person became aware; (iv) all facts You contend establish such awareness; and (v) how CGC participated or induced the breach.

**RESPONSE:** Without waiving the General Objections, Plaintiffs respond as follows:

Plaintiffs contend that Citco was aware of Fairfield's breaches of its fiduciary duties. In the face of awareness of Fairfield's breaches, Citco substantially assisted Fairfield, participated in, or induced Fairfield's breaches by continuing to serve as administrator and custodian, including providing the services necessary to process subscriptions and redemptions, transferring of funds from Plaintiffs to Fairfield and Madoff, and publishing NAV statements, without which Fairfield's breaches of duty could not have continued. Examples of principal or material facts and evidence supporting this contention are:

- Citco reviewed, revised, and approved the PPMs, and signed off on them knowing that they contained materially false and misleading statements and omissions, *see, e.g.*, [REDACTED]

[REDACTED]

[REDACTED] Response to Interrogatory No. 4, including that Citco knew Fairfield materially and falsely changed the PPM in regard to Madoff's discretionary control over the Funds' assets and his multiple roles in investing and holding the Funds' assets. Citco also knew that the PPMs and OMs gave the impression that Citco was performing services in a manner that was materially misleading, yet Citco did nothing to correct these misrepresentations and omissions, instead participating in them. *See, e.g.*, [REDACTED]

[REDACTED]