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December 3, 2015

By Facsimile

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

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

Dear Judge Marrero:

We write on behalf of the Standard Chartered Defendants (“SC Defendants”), with the agreement of the Standard Chartered Plaintiffs (“SC Plaintiffs”), to inform the Court that the parties in the Standard Chartered Cases (“SC Cases”) have reached agreement regarding a uniform negligence count. Pursuant to the Court’s prior orders granting certain plaintiffs leave to replead or plead a uniform negligence count, plaintiffs have proposed a uniform count in the form attached hereto as Exhibit A, to which the SC Defendants do not object. The SC Defendants reserve all factual and legal defenses with respect to the plaintiffs’ proposed negligence count, including the legal sufficiency of the allegations put forth in that count to plead a cognizable negligence claim. The SC Defendants understand that any eligible plaintiff in the SC Cases who wishes to add this uniform count will file an amended complaint for that sole purpose. The parties agree that such amended complaints should be filed no later than December 22, 2015, and hereby request that the Court set that deadline by order.

In addition, although the SC Defendants greatly appreciate the Court’s significant efforts, the SC Defendants believe that the SC Cases are appropriately remanded to the transferor courts and thus do not consent to retention of the SC Cases by this Court for trial. The SC Plaintiffs reserve all rights to file a motion to transfer their cases back to the Southern District of New York once remand is effected. Because the parties currently are working cooperatively to resolve certain outstanding matters, they

Honorable Victor Marrero

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request that the Court defer its decision on remand until December 22, 2015, in order to give the parties opportunity to complete that process.

Respectfully submitted.

*Sharon L. Nelles*

Sharon L. Nelles

Enclosure

cc: Standard Chartered Plaintiffs' Steering Committee (by e-mail)

Request GRANTED. *Pray*  
 Standard Chartered Plaintiffs  
 who seeks to amend the complaint  
 herein solely for the purpose of pleading  
 the uniform negligence claim referred  
 to above and attached to this letter.  
 SO ORDERED: as directed by do so by 12-22-15.  
 12-3-15  
 DATE *[Signature]* VICTOR MARRERO, U.S.D.J.

# **Exhibit A**

## Count \_\_ -- Negligence

Plaintiff adopts the allegations contained in the previous paragraphs. This is an action for negligence against Defendants.

1. At all material times, Defendants owed a duty to Plaintiff to exercise reasonable care.

2. Defendants breached that duty to exercise reasonable care and failed to use the care that a reasonably careful person would use under like circumstances, by among other things, doing or failing to do the following:

a. Making units in the Fairfield Sentry Fund available to Plaintiff and other customers to purchase and recommending the purchase of units of the Fairfield Sentry Fund to Plaintiff and other customers while:

i. Knowing that Madoff Securities was functioning in the multiple roles of investment manager, broker, and custodian for the assets of Fairfield Sentry and, therefore, knowing that no independent third party served as either the investment manager, the broker for the supposed execution of trades, or the custodian and no independent means existed for, among other things, verifying the accuracy of the trades being reported by monthly statements and trade confirmations, the accuracy of the reports of the value of the assets that supposedly were under management and held in custody, and the accuracy of the performance record being reported;

ii. Knowing that financial institutions that invest in Fairfield Sentry were not allowed to go and visit Madoff or Madoff Securities for due diligence purposes and knowing that American Express Bank would not be permitted to speak with Madoff about any aspect of Madoff's management, brokerage, and custody of the

assets of Fairfield Sentry;

iii. Failing to conduct a reasonable due diligence investigation directly of Madoff Securities including, but not limited to, failing to review documents and actual trade tickets, failing to conduct reasonable due diligence interviews of Madoff and the alleged traders and analysts who supposedly implemented the strategy, and failing to observe them during trading hours;

iv. Failing to conduct a reasonable due diligence investigation into the alleged due diligence (both initial and ongoing) and supervision conducted by Fairfield Greenwich and Fairfield Sentry into Madoff, Madoff Securities, Madoff's two-person accounting firm, the counterparties on the alleged option trades, the alleged trading, the review of alleged trades, and the systems to prevent fraud and the gaps in those systems as actually being implemented;

v. Failing to conduct a reasonable due diligence investigation into the performance record being reported by Fairfield Sentry and whether it was reasonable given the reports in industry publications, the nature of the split-strike conversion strategy, the movement of the S&P 100, and the negative skew of put to call premiums on the S&P 500 since 1986 as published by the Chicago Board of Options Exchange ("CBOE");

vi. Failing to conduct a reasonable due diligence investigation into the split strike conversion strategy as it was supposedly being employed by Madoff for Fairfield Sentry;

vii. Failing to conduct a reasonable due diligence investigation of the alleged counter-parties on the over-the-counter options allegedly being

purchased and sold by Madoff for Fairfield Sentry, including an investigation of the identity of these counter-parties, interviews of the counter-parties, review of the contracts for the options with these counter-parties, and investigation of the financial wherewithal of these counter-parties to perform their obligations under the option agreements;

viii. Failing to conduct a reasonable due diligence investigation of the two-person public accounting firm hired by Madoff to audit and report on the trading conducted for Fairfield Sentry and the other feeder funds;

ix. Failing to communicate to its relationship managers and investment specialists the essential facts relating to the due diligence investigation, which, if so communicated, would have prevented relationship managers and investment specialists from recommending Fairfield Sentry;

x. Failing to recognize as part of its due diligence investigation that a new version of the Private Placement Memorandum removed all references to Madoff and Madoff Securities and their multiple roles as the investment manager, the broker, and the custodian;

xi. Failing to recognize that since 1986 the premiums for equidistant puts on the S&P 500 Index have been higher than equidistant calls, which is known and published on the website of the CBOE as the Skew Index, and that therefore, the carry neutral explanation given by Madoff was impossible and the performance record of Fairfield Sentry was highly suspect;

b. Failing to monitor the Plaintiff's investment in Fairfield Sentry after Defendant recommended the purchase of the units of Fairfield Sentry to Plaintiff and

other customers, including but not limited to, failing to take or advise that action be taken in order to protect Plaintiff's investment while:

i. Knowing that Madoff Securities continued to function in the multiple roles of investment manager, broker, and custodian for the assets of Fairfield Sentry with no independent third party serving as either the investment manager, the broker for the supposed execution of trades, or the custodian and with no independent means existing to, among other things, verify the accuracy of the trades being reported by monthly statements and trade confirmations, the accuracy of the reports of the value of the assets that supposedly were under management and held in custody, and the accuracy of the performance record being reported;

ii. Knowing that Madoff and Madoff Securities continued to prohibit financial institutions that invested in Fairfield Sentry from being allowed to go and visit Madoff or Madoff Securities for due diligence purposes and knowing that American Express Bank would not be permitted to speak with Madoff about any aspect of Madoff's management, brokerage, and custody of the assets of Fairfield Sentry;

iii. Failing to conduct a reasonable ongoing due diligence investigation directly of Madoff Securities including, but not limited to, failing to review documents and actual trade tickets, failing to conduct probing interviews of Madoff and the alleged traders and analysts who supposedly implemented the strategy, and failing to observe them during trading hours;

iv. Failing to conduct a reasonable ongoing due diligence investigation into the alleged due diligence (both initial and ongoing) and supervision conducted by Fairfield Greenwich and Fairfield Sentry into Madoff, Madoff Securities,

Madoff's two-person accounting firm, the counterparties on the alleged option trades, the alleged trading, the review of alleged trades, and the systems to prevent fraud and the gaps in those systems as actually being implemented;

v. Failing to conduct a reasonable ongoing due diligence investigation into the performance record being reported by Fairfield Sentry and whether it was reasonable given the nature of the split-strike conversion strategy, the movement of the S&P 100, and the negative skew of put to call premiums on the S&P 500 since 1986 as published by the Chicago Board of Options Exchange ("CBOE");

vi. Failing to conduct a reasonable ongoing due diligence investigation into the split strike conversion strategy as it was supposedly being employed by Madoff for Fairfield Sentry;

vii. Failing to conduct a reasonable ongoing due diligence investigation of the alleged counter-parties on the over-the-counter options allegedly being purchased and sold by Madoff for Fairfield Sentry, including an investigation of the identity of these counter-parties, interviews of the counter-parties, review of the contracts for the options with these counter-parties, and investigation of the financial wherewithal of these counter-parties to perform their obligations under the option agreements;

viii. Failing to conduct a reasonable ongoing due diligence investigation of the two-person public accounting firm hired by Madoff to audit and report on the trading conducted for Fairfield Sentry and the other feeder funds;

ix. Failing to communicate to its relationship managers and investment specialists the essential facts relating to the due diligence investigation,



which, if so communicated, would have prevented relationship managers and investment specialists from continuing to recommend Fairfield Sentry;

x. Failing to recognize as part of its due diligence investigation that a new version of the Private Placement Memorandum removed all references to Madoff and Madoff Securities and their multiple roles as the investment manager, the broker, and the custodian;

xi. Continuing to fail to recognize that since 1986 the premiums for equidistant puts on the S&P 500 Index have been higher than equidistant calls, which is known and published on the website of the CBOE as the Skew Index, and that therefore, the carry neutral explanation given by Madoff was completely fallacious and the performance record of Fairfield Sentry was highly suspect;

xii. Failing at a meeting on April 15, 2008, with Madoff to recognize that the "asymmetric" profit profile described by Madoff was impossible since 1986, failing to question Madoff competently and thoroughly about his strategy and the scope of his supposed assets under management, failing to question Madoff competently and thoroughly about the systems in place to prevent fraud and the gaps in those systems as actually being implemented; and failing to send personnel to the meeting who possessed an adequate basic knowledge of the equity and over-the-counter options markets to understand that Madoff's explanations made no sense.

3. As a direct and proximate result of the foregoing negligence of Defendants, Plaintiff suffered damages in the amount of the investment made by Plaintiff in Fairfield Sentry and interest thereon.

WHEREFORE, Plaintiff demands judgment against Defendants for compensatory damages, plus pre-judgment interest, costs and for such further relief

as the Court deems just and proper.