

**SULLIVAN & CROMWELL LLP**

TELEPHONE: 1-212-558-4000  
 FACSIMILE: 1-212-558-3588  
 WWW.SULLCROM.COM

*125 Broad Street  
 New York, NY 10004-2498*

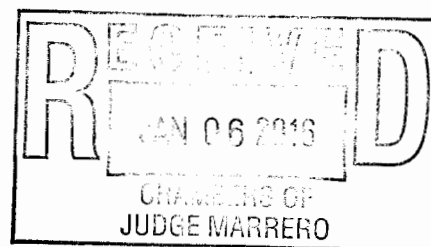
LOS ANGELES • PALO ALTO • WASHINGTON, D.C.  
 FRANKFURT • LONDON • PARIS  
 BEIJING • HONG KONG • TOKYO  
 MELBOURNE • SYDNEY

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #
DATE FILED: 1/6/16

December 29, 2015

By Facsimile

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



Re: *Anwar v. Fairfield Greenwich Ltd.* – No. 09-cv-118 (VM)(FM) –  
*Barbachano v. Standard Chartered Bank International (Americas)  
 Ltd., et al.*, No. 11-CV-3553

Dear Judge Marrero:

We write on behalf of Standard Chartered Bank International (Americas) Ltd. and Standard Chartered PLC (together, “SCB”) in response to the December 22, 2015 letter from plaintiff Teresa Barbachano concerning her proposed Third Amended Complaint. (Dkt. #1526.) Ms. Barbachano purports to submit her proposed amended pleading in response to this Court’s Order of December 3, 2015. That Order allowed certain Standard Chartered Plaintiffs to amend their operative complaints “solely for the purpose of pleading the uniform negligence [count]” in the form agreed by the parties. (Dkt. #1473 at 2 (emphasis added).) Ms. Barbachano’s proposed Third Amended Complaint, however, improperly attempts to re-plead, for the third time, claims dismissed by this Court years ago. SCB respectfully requests that the Court reject the proposed Third Amended Complaint and either (i) order that any further amended complaint drop all previously dismissed claims and add only the uniform negligence count; or (ii) deny Ms. Barbachano the right to further amend at all and proceed with remand of the *Barbachano* action as is.

There are two issues. *First*, Ms. Barbachano’s proposed new pleading reasserts, word-for-word, the fraud and negligent misrepresentation claims (Counts I, III and V) that this Court dismissed on October 24, 2012, *Anwar v. Fairfield Greenwich Ltd.*, 286 F.R.D. 258, 259 (S.D.N.Y. 2012) (Dkt. #995), and denied leave to re-plead on August 22, 2014 (Dkt. #1309). Likewise, Ms. Barbachano’s proposed breach of fiduciary duty and gross negligence claims (Counts II and IV) are replete with the same

Honorable Victor Marrero

-2-

allegations of misrepresentations and omissions that this Court found to be insufficient under Rule 9(b) in its prior Orders (*see* Proposed Third Am. Compl. ¶¶ 69, 93):<sup>1</sup> *Anwar*, 891 F. Supp. 2d 548, 552-55 (S.D.N.Y. 2012); *Anwar*, 286 F.R.D. at 259-60, and/or precluded under the Securities Litigation Uniform Standards Act of 1995, (July 29, 2015 Order, Dkt. #1396; August 28, 2015 Order at 3, Dkt. #1407 (“dismissing allegations based on the Standard Chartered Defendants’ failure to disclose investment risk”). Ms. Barbachano should not be permitted to use the Court’s assent to her submitting a proposed new uniform negligence count as license to assert, on the eve of her case being remanded back to the United States District Court for the Southern District of Florida, claims that this Court dismissed years ago.

*Second*, the proposed Third Amended Complaint asserts the same portfolio suitability claims that the Court dismissed and denied Ms. Barbachano leave to re-plead. Specifically, the asserted breach of fiduciary duty and gross negligence claims (Counts II and IV) allege breaches of purported “duties to review the investments contained in her investment portfolio, to render suitable recommendations regarding the increase or liquidation of assets in her investment portfolio . . . and to cause the purchase or sale of investments on behalf of Barbachano only after obtaining Barbachano’s written authorization.” (Proposed Third Am. Compl. ¶¶ 68, 92.) These allegations are identical to the allegations that Ms. Barbachano attempted to include in her proposed Second Amended Complaint. The Court denied Ms. Barbachano leave to file that complaint on August 22, 2014 after extensive letter briefing. (Dkt. ## 1301 (Letter from Mr. Lindsey on behalf of Ms. Barbachano), 1303 (Letter from Ms. Nelles on behalf of SCB), 1307 (Letter from Mr. Lindsey), 1308 (Letter from Ms. Nelles), 1309 (Order denying leave to file Second Amended Complaint)); *see also* 891 F. Supp. 2d at 552 (holding that “an inspection of the *Barbachano* complaint shows that what the plaintiff stylizes as an allegation of ‘failure to render suitable investment advice’ is actually indistinguishable from an allegation of negligent failure to conduct due diligence”). Ms. Barbachano has provided no basis for reconsideration of the Court’s prior Order—nor is there any.

Accordingly, SCB respectfully requests that the Court deny Ms. Barbachano leave to file her proposed Third Amended Complaint and order that any further amended complaint add only the uniform negligence count and drop all previously dismissed claims, including: (i) proposed Counts I, III and V in their entirety; (ii) any claim based on alleged misrepresentations or omissions in connection with Ms. Barbachano’s purchases of Fairfield Sentry Ltd; and (iii) any claim based on an alleged failure to render suitable investment advice with respect to investments in her portfolio. SCB further requests that Ms. Barbachano be ordered to file any further proposed amended

---

<sup>1</sup> (*See also* Proposed Third Am. Compl. ¶¶ 67, 69, 70, 71, 73, 91, 93, 94, 95, 97.)

Honorable Victor Marrero

-3-

complaint by no later than January 12, 2016. In the alternative, SCB respectfully requests that the Court deny Ms. Barbachano the right to further amend her complaint at all.

Respectfully submitted,

*Sharon Nelles*  
Sharon L. Nelles

cc: H. Eugene Lindsey, counsel for Ms. Barbachano

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 Defendants.

**SO ORDERED.**

1-6-16  
DATE *[Signature]* VICTOR MARRERO, U.S.D.J.